

No.

4101

United States
Circuit Court of Appeals
For the Ninth Circuit.

G. W. BRAINARD, as Trustee in Bankruptcy of
the PACIFIC CO-OPERATIVE LEAGUE
STORES, INC., Bankrupt,

Appellant,

vs.

SAN DIEGO CO-OPERATIVE ASSOCIATION,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

SEP 1 1903

U. S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

No.

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INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

| | PAGE |
|---|------|
| Answer | 11 |
| Assignment of Errors..... | 155 |
| Citation | 2 |
| Exceptions to Report | 51 |
| Names and Addresses of Attorneys..... | 1 |
| Order | 63 |
| Order | 153 |
| Order Allowing Appeal..... | 159 |
| Order to Show Cause..... | 20 |
| Opinion | 148 |
| Petition for Allowance of Appeal..... | 157 |
| Petition for Order to Show Cause..... | 16 |
| Petition in Reclamation | 4 |
| Praecipe | 161 |
| Report of Special Master..... | 22 |
| Report and Recommendation of Special Master.. | 44 |
| Statement of Evidence: | |
| Testimony on Behalf of Petitioners: | |
| Dennison, J. R..... | 143 |
| Eason, Charles J..... | 71 |
| Cross-Examination | 84 |
| Recalled | 144 |
| Gastil, Walter G..... | 97 |
| Gleason, Mrs. Bertha..... | 91 |

| | PAGE |
|------------------------------------|------|
| Gue, Stanley M..... | 88 |
| Hadland, John A. | 66 |
| Huggins, Walter | 93 |
| Mays, Charles J..... | 92 |
| Neal, W. S..... | 87 |
| Piltcher, C. H..... | 64 |
| Retsloff, Carl O..... | 105 |
| Romaine, Monott | 104 |
| Testimony on Behalf of Respondent: | |
| Ames, E. O. F..... | 142 |
| Barnes, Walter | 117 |
| Cross-Examination | 120 |
| Bishoff, J. N..... | 110 |
| Dobbs, H. H. | 136 |
| Cross-Examination | 141 |
| Floaten, H. A..... | 128 |
| Cross-Examination | 134 |
| Israel, H. C. | 125 |
| Cross-Examination | 125 |
| Johnson, A. A..... | 106 |
| Cross-Examination | 109 |
| Johnson, A. A..... | 145 |
| Seibert, John S..... | 121 |
| Cross-Examination | 124 |
| Simpson, Nora W..... | 126 |
| Stipulation | 159 |
| Stipulation of Facts..... | 146 |

Names and Addresses of Attorneys.

For Appellant G. W. BRAINARD, Trustee in Bankruptcy of the Estate of Pacific Co-Operative League Stores, Inc., Bankrupt:

NORMAN A. BAILIE, Esquire;

JOSEPH KIRK, Esquire, and

W. T. CRAIG, Esquire. Board of Trade Rooms, Higgins Building, Los Angeles, California.

For Appellees San Diego Co-Operative Association:

MARCUS W. ROBBINS, Esquire;

ELMER J. HERTEL, Esquire;

McNeece Block, San Diego, California.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION
IN EQUITY F-99.

| | | |
|--------------------------------------|---|-----------|
| In the Matter of the Petition of |) | |
| Meyer Cloak & Suit Co., etc., et al, |) | |
| for the appointment of Ancillary |) | CITATION. |
| Receiver for the PACIFIC CO- |) | |
| OPERATIVE LEAGUE STORES. |) | |
| INC., |) | |
| |) | |
| |) | Bankrupt. |

TO THE SAN DIEGO CO-OPERATIVE
ASSOCIATION:—

You are hereby CITED and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco in the State of California, on the 19th day of June, A. D. 1923, pursuant to the appeal duly obtained and filed in the Clerk's office of the District Court of the United States in and for the Southern District of California, in that certain controversy arising in the matter of the Petition of Meyer Cloak & Suit Co., etc., et al, for the appointment of Ancillary Receiver for the Pacific Co-Operative League Stores, Inc., between yourself and Wm. H. Moore, Jr., the Ancillary Receiver appointed in said matter, over the ownership of three (3) grocery stores at San Diego, California, and now pending in the District Court of the United States for the Southern District of California, Southern Division, and being numbered F-99 Equity, wherein

G. W. Brainard, as Trustee in Bankruptcy of the Estate of the said Pacific Co-Operative League Stores, Inc., bankrupt, is appellant and you are appellee,

Then and there to show cause, if any there be, why the minute order of said Court of November 23rd, 1922 and the final order of said Court of December 8th, 1922, both confirming the report of the Special Master Glenn H. Munkelt, and directing said Ancillary Receiver to deliver possession of said stores to said San Diego Co-Operative Association, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

DATED: May 21st, 1923.

Wm P James
United States District Judge.

Form No. 282

Return on Service of Writ.

United States of America
Southern District of California } SS:

I hereby certify and return that I served the annexed Citation on the therein-named Meyer Cloak & Suit Co. by handing to and leaving a true and correct copy thereof with Maurice W. Robbins personally at San Diego in said District on the 22d day of May, A. D. 1923.

A. C. Sittel

U. S. Marshal
By R. F. Gusweiler

Deputy.

(Endorsed): Service of the within citation is hereby admitted this 22 day of May, 1923. Maurice W. Robbins, Elmer J. Hertel, Attorneys for San Diego Hotel Association.

Filed Jun 8, 1923 Chas. N. Williams, Clerk By W. J. Tufts Deputy Clerk

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DIS-
TRICT OF CALIFORNIA

In Equity # F-99

| | | |
|----------------------------------|------------|-------------|
| In the Matter of |) | |
| The Petition of Meyer Cloak) | | |
| & Suit Co., etc. et al, for the) | | PETITION |
| appointment of Ancillary) | IN | RECLAMATION |
| Receiver for PACIFIC CO-) | AND FOR AN | |
| OPERATIVE LEAGUE) | ACCOUNTING | |
| STORES, Inc., |) | |
| Bankrupt. |) | |

To the District Court of the United States, for the Southern District of California:

The petition of the San Diego Co-operative Association respectfully shows and alleges:

FIRST: That your petitioner is the owner, and entitled to the immediate possession of the property set forth in Schedule "A" hereto annexed, and made a part hereof, and that the value of said property is about Twenty Thousand (\$20,000.00) Dollars.

SECOND: That your petitioner further alleges, upon information and belief, that heretofore, and on or about the 27th day of February, 1922, an involuntary petition in bankruptcy was filed in the office

of the Clerk of the U. S. District Court, for the Northern District of California, by three (3) creditors of the above bankrupt, praying that the said Pacific Co-operative League Stores, Inc., be adjudged an involuntary bankrupt, and that thereafter G. W. Brainard, Esq., was duly appointed as temporary Receiver in Bankruptcy of the said Pacific Co-operative League Stores, Inc., and that subsequent to his appointment a petition was filed in the District Court of the United States for the Southern District of California by the Meyer Cloak & Suit Company, etc., et al, for the appointment of an Ancillary Receiver for the said Pacific Co-operative League Stores, Inc., in the Southern District; that upon said petition said Court duly appointed as Ancillary Receiver of said bankrupt, William H. Moore, Esq., and that pursuant to the order of his appointment and a subsequent order, after the hearing of an order to show cause, served upon the Sheriff of San Diego County, in the State of California, he did take possession of, and continues to hold the property mentioned and described in the Schedule hereunto annexed and made a part hereof, marked Exhibit "A" and that the said property was in the original piece in which it was delivered to the Sheriff of the County of San Diego, State of California; that on the 15th day of March, 1922, the said Pacific Co-operative League Stores, Inc., was duly adjudicated a bankrupt.

THIRD: That heretofore, and before the commencement of this proceeding, due demand was made by your petitioner upon the said William H. Moore,

Esq., Ancillary Receiver, that he deliver possession of the said personal property in said Schedule "A" mentioned, to your petitioner, but that said demand has been refused.

FOURTH: That the San Diego Co-operative Association is an association of laboring men, and their families, that have joined together for the purpose of conducting stores on the co-operative plan and thereby reduce their cost of living; that said association was formed on or about the 22nd day of November, 1919 and that about said time, and in the said City of San Diego they appointed and employed the Pacific Co-operative League, a co-operative business Association as their Trustee, to receive all of the moneys arising out of the conduct of said business, to disburse the same for the benefit of said business in paying bills and expenses contracted by the said S. D. Co-operative Association, and to keep the books and accounts of said stores.

That at the time of the establishment of said relation between the San Diego Co-operative Association and the Pacific Co-operative League, it was understood and agreed that the said San Diego Co-operative Association should elect a Board of Managers to co-operate with the Pacific Co-operative League in the management of said business, and that said Board of Managers should have an equal vote in the management of the said business with the Pacific Co-operative League and should consult and advise with the Pacific Co-operative League in all matters pertaining to the management of the said business and in the se-

lection and choice of a Manager to conduct the said business.

That since said time the Pacific Co-operative League has violated the terms of said trust and in the following particulars, to-wit:

It has prevented the Board of Managers elected by said persons from having any choice at all in the management of said business or in the selection of a Manager; that it has diverted the funds arising from said business to purposes wholly foreign and not connected with said business in any way; that it has taken cash from the said stores and loaned the same to other institutions situated in the State of California; that it has taken money from the said stores and used the same for its own purposes and that none of said moneys have been returned to the said stores, all of which has been contrary to the will and wish of said persons and the said Board of Managers elected by them. That on or about the 1st day of November, 1921 the Pacific Co-operative League sold to, and the Pacific Co-operative League Stores, Inc., purchased from, and took possession of, all of the personal property mentioned in Schedule "A" annexed hereto, being the stores owned by the San Diego Co-operative Association, without their knowledge or consent to said sale.

That on or about the 3rd day of November, 1921, E. C. Bellows, Commissioner of Corporations for the State of California issued a second amended permit to the Pacific Co-operative League Stores, Inc.; that the following paragraph appears in said permit: "In

exchange for the assets, subject to the liabilities, and the business of the Pacific Co-operative League, the applicant proposes to issue to said Pacific Co-operative League five hundred shares of its common capital stock"; that your petitioner further alleges upon information and belief, that five hundred shares of the common capital stock of the Pacific Co-operative League Stores, Inc., was issued to the Pacific Co-operative League in exchange for the assets, and subject to the liabilities in the business of the Pacific Co-operative League.

That on the 15th day of December, 1921, the said San Diego Co-operative Association met and discharged the said Pacific Co-operative League as its Trustee, as aforesaid, and appointed the Board of Directors of the San Diego Co-operative Association as its trustees to conduct the said business in their behalf until other trustees should be appointed by them; that the names of the persons elected as their trustees are as follows, to-wit: Charles J. Eason, Ed Crolie, Stanley M. Gue, Charles B. Lynch, Charles J. Mayes, Mrs. P. T. Mannen and Marcus W. Robbins.

That no accounting has ever been had between said San Diego Co-operative Association and the Pacific Co-operative League, and that the San Diego Co-operative Association is ignorant of the amount due or owing to the said San Diego Co-operative Association by the Pacific Co-operative League, but they are informed, and believe, and upon such information and belief allege that there is due to said San Diego Co-operative Association a large sum of money, and they

allege that an accounting is necessary to determine the amount due to said San Diego Co-operative Association by the Pacific Co-operative League.

FIFTH: That the said personal property mentioned in Schedule "A" annexed hereto has not been taken by virtue of a warrant against your petitioner for the collection of any tax, assessment, or fine, issued in pursuance of a Statute of the United States, and they have not been seized by virtue of an execution or warrant of attachment from, or through whom your petitioner has derived title to the said chattels.

WHEREFORE your petitioner does respectfully pray that the said William H. Moore, Esq., as said Ancillary Receiver herein, be directed to deliver to your petitioner the said property in Schedule "A" mentioned and described; and that an accounting be had; and that the Pacific Co-operative League and the Pacific Co-operative League Stores, Inc., be ordered to account to the San Diego Co-operative Association and that this Court thereupon make its order, giving your petitioner judgment against the Pacific Co-operative League Stores, Inc., for the amount so found to be due; and that your petitioner have such other and further relief, as to this Honorable Court may seem just and proper.

DATED 27 day of March, 1922.

San Diego Cooperative Association
Petitioner

Marcus W. Robbins

Elmer J. Hertel
Attorneys for Petitioner
505 Southern Title Building
San Diego, California

SCHEDULE "A"

That certain personal property in the City of San Diego, County of San Diego, State of California, described as follows:

All the stock in trade, fixtures, furniture, equipment, books of account, moneys, and other personal property located upon the premises situated in the City of San Diego, County of San Diego, State of California, and generally known as 618 Fifth Street, 426 Market Street, 1033 Broadway, together also with the good will of the general merchandise business being carried on at said places.

State of California County of San Diego—ss.

Ed Crolie being first duly sworn deposes and says: That the Petitioner is an association of persons known as The San Diego Cooperative Association and that Ed Crolie is an executive officer of said Association, to-wit: Vice President, and makes this verification for and on behalf of said Petitioner; That he has read the within and foregoing petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters which are herein stated on information or belief and as to those matters he believes them to be true.

Ed Crolie.

Subscribed and sworn to before me this 27th day of March A. D., 1922.

[NOTARIAL SEAL]

Marcus W. Robbins,
Notary Public San Diego County State of California.

(Endorsed): Received copy of 'within petition this 29th day of March, 1922. Wm. H. Moore, Jr., Ancillary Receiver.

Filed Mar 30, 1922 Chas. N. Williams, Clerk By R. S. Zimmerman Deputy

[TITLE OF COURT AND CAUSE.]

ANSWER OF ANCILLARY RECEIVER TO PETITION OF SAN DIEGO CO-OPERATIVE ASSOCIATION

Comes now Wm. H. Moore, Jr., and answering the petition in reclamation and for an accounting hereinbefore filed by the San Diego Co-operative Association, respectfully admits, denies and alleges, as follows:

I.

Alleges that respondent is the duly appointed, qualified and acting Ancillary Receiver in Bankruptcy for the assets of the Pacific Co-operative League Stores, Inc., Bankrupt, situated in the Southern District of California.

II

Respondent has not sufficient information or belief to enable him to answer the allegations contained in the first paragraph of said petition, to the effect that said petitioner is the owner of and entitled to the possession of the property mentioned and described in Schedule A attached to said petition, and by reason of said lack of information and belief, denies that said petitioner is the owner of or entitled to the im-

mediate, or any other possession of any of the property set forth in said Schedule A. Respondent is informed and believes, and upon such information and belief alleges, that the property mentioned and described in said petition and in Schedule A attached thereto, was, at the date of the filing of the petition herein, a part of the assets of said Pacific Co-operative League Stores, Inc., Bankrupt, and that upon the election and qualification of a Trustee in Bankruptcy of the estate of said Pacific Co-operative League Stores, Inc., Bankrupt, the title to all of said property will be vested in said Trustee.

III

Admits each and every allegation contained in the second paragraph of said petition.

IV

Admits each and every allegation contained in the third paragraph of said petition.

V

Respondent is not sufficiently informed and has no sufficient belief to enable him to answer certain of the allegations contained in the fourth paragraph of said petition, and by reason of such lack of information and belief denies that the San Diego Co-Operative Association is an association of laboring men, or an association of laboring men and their families joined together for the purpose of conducting stores, as alleged in said petition, and denies that said association was formed on or about the 22nd day of November, 1919, and that said association at said date, or at any other time or at any place, appointed and employed,

or appointed or employed the Pacific Co-operative League, or any other association, as their Trustee, or in any other capacity, to receive all moneys arising out of the conduct of said business, or any business, or to disburse the same in paying bills and expenses contracted by said San Diego Co-operative Association, or any other association or person, or to keep the books and accounts of said stores, or any other stores.

By reason of said lack of information and belief respondent denies, that it was understood and agreed, or understood or agreed that said San Diego Co-operative Association should elect a Board of Managers to co-operate with said Pacific Co-operative League in the management of said business, or in any other way, and denies that said Board of Managers was to have an equal vote in the management of said business with the Pacific Co-operative League, or to have any vote at all in the management of any business with which said Pacific Co-operative League was connected, or in which it had any interest, or that said Board of Managers should consult and advise, or consult or advise, with said Pacific Co-operative League in all matters, or any matters pertaining to the management of said business or the selection or choice of a manager to conduct the said business, or to consult or advise in any way in regard to the conduct and management of any business in which said Pacific Co-operative League had any interest.

By reason of said lack of information and belief, respondent denies that said Pacific Co-operative League

has diverted the funds arising from said business, or any business, to purposes wholly foreign and not connected therewith, and denies that said Pacific Co-operative League has taken cash from said stores, or any of them, and loaned the same to other institutions situated in the State of California or anywhere else. Admits that on or about the 1st day of November, 1921 said Pacific Co-operative League sold to, and that the Pacific Co-operative League Stores, Inc., the bankrupt above named, purchased from and took possession of all of the personal property mentioned in said petition and Schedule A annexed thereto, but respondent is not sufficiently informed, nor has he sufficient belief to enable him to answer the allegation contained in said petition, that said sale was without petitioner's knowledge or consent, and by reason of said lack of information and belief denies that said sale was without the knowledge and consent of said petitioner, and respondent is informed and believes and upon such information and belief alleges, that said petitioners had no interest in or to said stores, and that their knowledge or consent in regard to said sale was neither necessary nor material.

Respondent is not sufficiently informed and has not sufficient belief to enable him to answer the allegations contained in the paragraph on page 4 of said petition, relative to the discharging of said Pacific Co-operative League as Trustee, and the appointment of a Board of Directors as its Trustee, to conduct said business, and by reason of said lack of information and belief, denies that on the 15th day

of December, 1921, the said San Diego Co-operative Association met and discharged the said Pacific Co-operative League as its Trustee, or that said Pacific Co-operative League was in any way Trustee for said San Diego Co-operative Association, and denies that said San Diego Co-operative Association appointed the Board of Directors of said San Diego Co-operative Association to conduct said business, or any business, or that it had any right whatsoever to appoint a Trustee for the purpose of conducting any stores in the possession of said Pacific Co-operative League, or said Pacific Co-operative League Stores, Inc.

By reason of said lack of information and belief, respondent denies that no accounting has ever been had between said San Diego Co-operative Association and said Pacific Co-operative League, or that any amount is due or owing to said San Diego Co-operative Association from said Pacific Co-operative League, and denies that any accounting is necessary between said San Diego Co-operative Association and said Pacific Co-operative League, or that any accounting is material or proper in this proceeding, as between said San Diego Co-operative Association and said Pacific Co-operative League Stores, Inc., the above named bankrupt.

WHEREFORE, respondent prays that said petition may be dismissed.

Wm. H. Moore, Jr.

Respondent.

W. T. Craig

Attorney for Respondent.

| | |
|---------------------------------|-------|
| United States of America | } ss. |
| Southern District of California | |
| Southern Division | |
| County of Los Angeles | |

WM. H. MOORE JR. being duly sworn says:
That he is Ancillary Receiver in the foregoing entitled matter; that he has read the foregoing Answer of Ancillary Receiver to petition of San Diego Co-Operative Association, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

Wm. H. Moore, Jr.

Subscribed and sworn to before me this 4th day
of April A. D. 1922

(NOTARIAL SEAL)

Bess A. Aldrich

Notary Public in and for the County of Los Angeles,
State of California.

(Endorsed): FILED April 5, 1922. Chas. N.
Williams, Clerk.

[TITLE OF COURT AND CAUSE.]

PETITION FOR ORDER TO SHOW CAUSE.

THE PETITION of Wm. H. Moore, Jr., respectfully represents:

I

That he is the duly appointed, qualified and acting Ancillary Receiver in Bankruptcy for the assets in the Southern District of California, belonging to the Pa-

cific Co-operative League Stores, a corporation, bankrupt. That said bankrupt had its principal place of business at San Francisco in the Northern District of California, and has been adjudicated bankrupt by order of the United States District Court for said Northern District of California.

II

That upon the appointment of your petitioner as such Ancillary Receiver and the adjudication in bankruptcy of said bankrupt, James C. Byers, Sheriff of San Diego County, California, had in his possession, under writs of attachment issued in that certain action then pending in the Superior Court of the City and County of San Francisco, State of California, entitled "W. H. Cordes, plaintiff, vs. Pacific Co-operative League Stores, Inc., Defendant," three stores at the following locations in the City of San Diego, County of San Diego, this District and Division, viz: No. 1033 Broadway, Nos. 616-20 Fifth Street and No. 426 Market Street, which said Sheriff had attached as the property of said defendant, and was holding at the date of adjudication in bankruptcy of said bankrupt, as the property of said defendant under and by virtue of said writs of attachment so issued as aforesaid.

III

That under and by virtue of an order heretofore made and entered herein, said Sheriff was directed to deliver said stores into the possession of your petitioner as such Ancillary Receiver, and said stores are now in petitioner's possession as such Ancillary Receiver.

IV

That petitioner is informed and believes and upon such information and belief alleges, that Jack Larripa, Ed. Crolic, Charles J. Mayes, Stanley M. Gue, Clifford C. Costenborder and Charles B. Lynch, who claim to be associated together, and with other persons, and doing business under the name and style of San Diego Co-operative Association, claim some right, title and interest in and to said three stores, and to each of them, but petitioner is informed and believes and upon such information and belief alleges, that neither of said individuals nor said Association have any right, title or interest in and to said stores, and that the same are the property of said bankrupt.

V

That before this estate can be administered in bankruptcy, it will be necessary to determine the rights of said parties in and to said three stores, and said right should be determined at the earliest date possible.

WHEREFORE, petitioner prays that an order may be made and entered herein requiring said Jack Larripa, Ed Crolic, Charles J. Mayes, Stanley M. Gue, Clifford C. Costenborder and Charles B. Lynch, for and on their own behalf, and on behalf of said San Diego Co-operative Association, to be and appear before this Honorable Court at a time and place to be named in said order, then and there to show cause if they or either of them may have, why an order should not be made and entered herein decreeing that said three stores, and each of them, are the property of the Pacific Co-operative League Stores, a corpora-

tion, now bankrupt, and of the Trustee in Bankruptcy hereafter to be elected, of the estate of said bankrupt. And further to show cause why said stores should not be sold by said Trustee as the property of said estate, and why it should not be determined that neither said parties nor any of them, nor said San Diego Co-operative Association has or have any right, title or interest therein, and why said parties and each of them, their agents, representatives, employees and attorneys should not be perpetually restrained and enjoined from in any way claiming or representing that they have, or that either of them, or said San Diego Co-operative Association, has any right, title or interest in or to said stores, or either of them, and from prosecuting any action for the purpose of establishing or enforcing any such claim, and restraining said Jack Larripa, Ed Crollic, Charles J. Mayes, Stanley M. Gue, Clifford C. Costenborder and Charles B. Lynch, and said San Diego Co-operative Association from proceeding in any Court other than this Court, to establish any claim of right, title or interest in or to said stores, pending the hearing and determination of said order to show cause.

Wm. H. Moore, Jr.

Petitioner.

W. T. Craig

Attorney for Petitioner.

United States of America
Southern District of California } ss.
Southern Division
County of Los Angeles }

WM. H. MOORE, JR. being duly sworn says: That he is THE PETITIONER in the foregoing entitled matter; that he has read the foregoing Petition for Order to Show Cause and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 28th day of
March A. D., 1922

[NOTARIAL SEAL] BESS A. ALDRICH
Notary Public in and for the County of Los Angeles,
State of California

Endorsed: Filed Mar 30 1922. Chas. N. Williams,
Clerk; By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

ORDER TO SHOW CAUSE.

On reading and filing the verified petition of Wm. H. Moore, Jr., and on motion of W. T. Craig, (H. R. Archbald, of Counsel), good cause appearing therefor,

IT IS ORDERED, that Jack Larripa, Ed Crolic, Charles J. Mayer, Stanley M. Gue, Clifford C. Costenborder and Charles B. Lynch, and the San Diego Co-operative Association, and each of them, be, and

appear before this Honorable Court on the 5th day of April, 1922, at 10 o'clock, A M, at the Court room thereof, in the City of San Diego, then and there to show cause if any they, or either of them may have, why an order should not be made and entered herein, granting the prayer of the petition of Wm. H. Moore, Jr., and decreeing that the three stores mentioned and described in said petition, are the property of the estate of said Pacific Co-operative League Stores, a corporation, bankrupt, and of the Trustee of said bankrupt, hereafter to be elected. And further to show cause why said stores and each of them should not be sold as an asset of said estate, and why it should not be determined that said parties do not have, nor do any of them, any right, title or interest in and to said stores, and why they and each of them should not be restrained from in any way claiming or asserting any interest therein.

AND IT IS FURTHER ORDERED, that pending the hearing and determination of said order to show cause that said parties and each of them, their agents, representatives, employees and attorneys, be, and they are hereby restrained from proceeding in any other Court other than this Court, or the Court of Bankruptcy in which the main administration is pending, for the purpose of establishing their claim to said stores.

AND IT IS FURTHER ORDERED, that service of this order may be made by delivering a copy hereof, together with a copy of the petition upon which the

same is based, to said parties and each of them, at least 5 days prior to said 5th day of April, 1922.

Bledsoe

UNITED STATES DISTRICT JUDGE.

(Endorsed): Filed Mar 30, 1922. Chas. N. Williams, Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

REPORT OF SPECIAL MASTER.

TO THE HONORABLE JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA. SOUTHERN DIVISION:

I, Glen H. Munkelt, the undersigned to whom as Special Master the application of the San Diego Co-Operative Association for an order directing the Ancillary Receiver in the above entitled matter to deliver to petitioner certain property described in said petition and the order to show cause issued upon petition of said Ancillary Receiver and the issues raised by said pleadings were duly referred by order dated April 15, 1922, for examination, testimony and report do hereby report as follows:

That the above matter was duly brought on for hearing before me in the court room of the above entitled Court in the Federal Building at San Diego, California, on the 24th day of April, 1922, and the matter heard and continued from day to day to and including the 27th day of April, 1922.

That at said hearing the petitioner, the San Diego Co-Operative Association, appeared by and through its attorneys Elmer J. Hertel and Marcus W. Robbins and by and through several of its directors;

That the Ancillary Receiver Wm. H. Moore, Jr. appeared by and through his attorney Norman A. Bailie;

That Pacific Co-Operative League Stores, a corporation, a bankrupt, and the Pacific Co-Operative League, a corporation, a bankrupt, appeared by and through their attorney Byron F. Stone Jr. and by and through their President E. O. Ames.

That at said hearing oral and documentary evidence was introduced and received and a stenographic report thereof taken and a transcribed record of said testimony is herewith filed and made a part of this report.

That from the evidence received the Special Master reports that the following facts have been established.

1.

That on November 22, 1919, and for some time prior thereto certain persons in San Diego, California, had associated themselves together for the purpose of co-operative buying; that said association was unincorporated and named itself "San Diego Consumers Co-Operative Association"; that said organization with a larger membership continued during the time herein under discussion, the name of said organization being changed at one time to the San Diego Co-Operative Association, subsequently changed to the Pacific Co-Operative League, San Diego Branch, and again changed to the present name of petitioner, the San Diego Co-Operative Association; that said organiza-

tion at no time has complied with Section 2466 to 2468 inclusive of the Civil Code of the State of California; that during the time herein referred to said organization had a Board of Directors which held regular meetings and whose activity is hereafter more fully described; (for brevity this organization is hereafter termed the local organization without reference to its specific name unless the name appears to be material.)

2.

That on or about October 13, 1913, the Pacific Co-Operative League was incorporated under and by virtue of the laws of the State of California and particularly under Title XX of the Civil Code of the State of California, with its principal place of business at San Francisco, California. That in the year 1913 the said Pacific Co-Operative League adopted By Laws for its government. Said By Laws continued in effect and were in effect at the times herein mentioned. Copy of said By Laws being introduced in evidence and marked Petitioner's Exhibit 12. The following are extracts from said By Laws which have bearing upon the controversy before the Court:

"Second: That the purpose for which this Association is formed is to promote the theory of co-operation and to advance its practical development, to establish a central bureau of information, education, publicity, and general service, and to provide literature and lectures; to assist in and promote conventions for the general advance of the co-operative movement; to act as organizers, promoters, advisers and auditors for co-operative associations and to assist independent co-

operative enterprises to work in unity with one another and to develop a federation of co-operative bodies for mutual advantage."

"Article II Sec. 2. Definition of "Associate" member. In order that persons may become associated with the Pacific Co-Operative League and enjoy the clubbing and trading as well as the social and educational privileges of the association without assuming or incurring any liabilities beyond the investment of loan capital as hereinafter provided, and in order that such persons be organized into locals or branches that they may operate stores or enterprises, the Board of Directors may provide rules and regulations to admit and retain "associate members" and to charter them into branches with representation on the Board of Directors."

"Article VIII Sec. 5. Members' branch meetings. The Board of Directors shall have power to devise ways and means for regular business, social and educational meetings for the various branches of the association."

"Article IX Sec. 3. Operation of Branches. In order to permit the operation of branch stores by associate members as provided in Article II Section 2, it is hereby provided that the Board of Directors may upon request from a group of associate members order a survey of any district selected for a branch store to be made, decide the number of members and the capital required to operate such branch. If the directors, as a result of said survey, decide in favor of establishing such branch, the capital may be provided by a payment

of each applicant who is not already an associate member of Ten Dollars (\$10.00) for associate membership, plus such payments for loan capital by each associate member as shall by the total number of persons applying provide the capital necessary to establish the branch in business. The conditions governing capital payments in Sections 6 and 7 in Article 2 shall apply to loan capital, provided however that the loan capital paid by the members of a local store may be returned in whole or in part at the dissolution of their store according to its then actual value at the time of such dissolution."

"Article IX Sec. 4. Each local branch upon being admitted into the Pacific Co-Operative League shall transfer to the league the funds collected as loan capital for the establishment of its store, for which there shall immediately be issued membership loan capital certificates. The Central Board of Directors of the Pacific Co-Operative League shall then proceed to institute the store and shall provide equipment and stock for the same within the funds as above provided, and shall also extend its wholesale operations as and when necessary to serve efficiently said branch. The Central Board of Directors of the Pacific Co-Operative League shall render monthly or oftener, if necessary, a statement covering fully all transactions between the central body and the said branch."

"Article IX Sec. 5. By-Laws for locals. Local branches or the Central Board of Directors shall prepare by-laws and rules in conformity with the general constitution for the conduct of the local branches.

Such by-laws shall be approved by the Central Board of Directors and placed on file in the central office."

"Article X Sec. 1. (a) All business of this association shall be conducted on a strictly cash basis. (b) In the establishment of local distributing warehouses, stores, factories, or other business extension, cash or its equivalent must be in hand sufficient to cover the investment. (c) In no case shall the Board of Directors incur liabilities for operating expenses unless there is a reasonable prospect of income to more than cover the same. (d) Business extensions of every character under the league system shall be founded and continued only upon a basis of self support. In the event of any business branch of the association failing to show prospects of becoming self supporting, the same shall be discontinued at the earliest possible moment."

"Article X Sec. 3. This association is not in business to make profit but to supply its members at the lowest possible cost on the Rochdale Plan. It proposes to eliminate all unnecessary middlemen and to provide a short cut method of distribution from producer to consumer, thereby steadily reducing the cost of living. Its aim is to assume control of industries and production and free as rapidly as possible the natural resources of the earth that such reduction of the cost of living may speedily and effectively be consummated."

3.

That in the latter part of the year 1919 communication arose between the local association and Pacific

Co-Operative League and at this time printed matter including copies of the by-laws were circulated among the members of the local association and to persons who might and did become members of the local association.

4.

That on or about the 7th day of February, 1920, A. A. Johnson, the official organizer of the Pacific Co-Operative League, arrived in San Diego for the purpose of taking subscriptions to the co-operative organization, the form of the subscription being hereinafter set forth.

5

That in addition to the representations contained in the by-laws of the said Pacific Co-Operative League, oral representations were made by the said official organizer to the effect that the Pacific Co-Operative League was interested in promoting co-operative buying; that it was not organized for profit, that it rendered to its members services in the way of educational advantages, club buying, and where stores were organized the League managed the stores, furnishing expert managers therefor, who were trained in co-operation; that the League would do the bookkeeping for the local stores, audit the books and make reports to the local stores monthly, or more frequently if necessary; that the local stores would be financed by money subscribed by the local people, which would be returned on dissolution of the stores; that the money subscribed by the local members would bear interest at 5%, to be paid from the profit of the business of the

local stores; that the subscribers would share in the profits of the local stores in proportion to the amount of goods which they themselves purchased from the local stores; that the business of other branch stores would not be taken into consideration in fixing profits or interest upon the money subscribed by San Diego people.

6.

That at the time said representations were made by organizer Johnson subscriptions were circulated in San Diego in form marked Petitioner's Exhibit 5 A, as follows:

"That the undersigned hereby agree to subscribe for membership in the San Diego branch co-operative store and agree to pay thereon the sum of \$50.00 in cash or installments on receiving notice of collection."

7.

That the subscribers at the time of organization were also presented with and signed a subscription blank in form marked Respondent's Exhibit 1, which is as follows:

"PACIFIC CO-OPERATIVE LEAGUE, INC.

No. 1752.

236 Commercial St. San Francisco.

Affiliated with the National and International Co-Operatives.

I, the undersigned in order to assist in the establishment of the CO-OPERATIVE STORE (branch of Pacific Co-Operative League) at San Diego, hereby

subscribe the sum of \$. of which \$10.00 is for
associate membership and the balance for.

(State whether

.
first payment on loan capital or new loan or instal-
ment) for investment by Pacific Co-Operative League
in said store to be entitled to interest and privileges
according to the by-laws.

I agree to pay of the above amount \$50.00 deposit
with this application and the balance as follows:

Amount paid: \$50.00 Signed Chas. H. Peltcher.

Associate Member \$. . . . Address, Ocean Beach, S. D.

Loan capital \$. Received by A. G. Rogers, A.

Johnson.

Loan \$ San Francisco, Cal.

Total \$. Feb. 14, 1920.

The white copy is the members official receipt.

The blue copy must be returned to the central office
with cash, check or deposit slip.

The yellow copy must be retained by the local store or
field representative."

8.

It was agreed that each subscriber in San Diego
should contribute the sum of \$50.00; \$10.00 to be set
aside as associate membership in the Pacific Co-Opera-
tive League, as provided in the by-laws; that the re-
maining \$40.00 was to be loan capital, as provided in
the by-laws, the payment of said \$40.00 being evidenced
by certificate in form marked Petitioner's Exhibit 9,
which is as follows:

“Co-Operation.

Producer Consumer

The link that binds.

PACIFIC CO-OPERATIVE LEAGUE. INC.

San Francisco, California.

Incorporated Oct. 13, 1913. Not Operated for Profit.

CERTIFICATE OF LOAN CAPITAL (Without
liability.)

Received of George F. Gray

(The holder hereby agrees) the sum of Forty, &
(that this Certificate is) 00/100 Dollars \$40.00 as
(liable to forfeiture in the) loan capital. This loan
(event the holder becomes) capital is to be invested
(indebted to the Pacific) in the Pacific Co-Opera-
(Co-Operative League.) tive League for the use
PACIFIC of the Co-Operative store
CO-OPERATIVE LEAGUE at San Diego, Calif. in
SEAL accordance with the By-
San Francisco, California. Laws of the Pacific Co-
Operative League.

PACIFIC CO-OPERATIVE LEAGUE

Ernest O. F. Ames, President.

Attest: W. S. Huntington, Registrar.

Dated, San Francisco, Cal. Aug. 30, 1920.”

9.

That at the time said subscriptions were taken and said loan certificates issued, no statement was made other than may be ascertained from the By-laws as to who would own the stores purchased from the money subscribed as loan capital by the San Diego people. It was not represented that the stores would or would not belong to the Pacific Co-Operative League, nor was it represented that the stores would belong to the persons subscribing the loan capital.

10.

That the local organization and the Pacific Co-Operative League, through their organizer and officers, co-operated in raising money on the subscriptions above referred to, for the purpose of establishing and purchasing a store or stores in San Diego. That prior to August 11, 1920, the Board of Directors of the local organization, assisted by A. A. Johnson, official organizer of the Pacific Co-Operative League, made a survey of San Diego with the view of purchasing or establishing a store or stores. That after investigation it was agreed by the Board of Directors of the local organization and the representatives of the Pacific Co-Operative League to purchase three stores then the property of the Consumers Grocery Company, Inc., of which Justin W. Hammond was the President.

11.

That in the performance of said agreement the Board of Directors of the local association on August 11, 1920, entered into a contract for the purchase of the said three grocery stores, which contract is marked Petitioner's Exhibit 7. Said contract is signed by the Consumers Grocery Company, Inc., by Justin W. Hammond President, and the San Diego Co-Operative Association (the then name of the local organization) by J. N. F. Bischoff President and Charles J. Eason Secretary. The contract of purchase provided for an agreement of sale to be approved by the Pacific Co-Operative League. This approval was subsequently given by the Pacific Co-Operative League. That at the time said contract of purchase was executed there

has been subscribed in San Diego an amount in excess of \$20,000.00 as loan capital, through the efforts of the official organizer and the assistance of the Board of Directors of the local organization. That at the time of the signing of said contract on August 11, 1920 a draft for the sum of \$1,000.00 was drawn in favor of the Consumers Grocery Company, which was in due course of business paid by the Pacific Co-Operative League and charged to the account of the San Diego stores. That at the time said draft was drawn and paid the said Pacific Co-Operative League had received from the subscriptions above referred to money considerably in excess of the amount of the said draft.

12.

That subsequent to the signing of said contract H. A. Floatin, a store supervisor for the Pacific Co-Operative League, came to San Diego to consummate the purchase of said three grocery stores.

13.

That on September 1, 1920, the Consumers Grocery Company, Inc. caused to be executed and recorded in the office of the Recorder of San Diego County a notice of intention to sell the three grocery stores herein described. Said notice of sale recited that the property would be sold to the Pacific Co-Operative League, Inc. that the local organization nor its Directors had notice of the executing and recording of said notice of sale except as would be legally implied from recordation. (Respondent's Exhibit 2.)

14.

That in pursuance of the purchase of said stores an inventory of the stock of goods of said three stores was taken by twenty or twenty-one persons. It was agreed that the Consumers Grocery Company and the vendee should furnish an equal number of persons to perform the work of taking the inventory and the persons furnished by the vendee were the Board of Directors of the local organization together with two or three volunteers.

15.

That the total purchase price as agreed upon by the vendor and Mr. Floatin was \$21,616.38; that it was not brought to the attention of the local organization or its Board of Directors the fact that the total purchase price was in variance with the contract of purchase of August 11, 1920. The said purchase price was paid as follows: \$1000.00 paid at the signing of said agreement as above described; that on September 1, 1920, a draft was drawn in favor of the Consumers Grocery Company for \$12,000.00 which was and is in words and figures as follows, towit:

"Pacific Co-Operative League, Inc. X00562.

236 Commercial St. San Francisco. No. 8551

Sept. 1, 1920.

PAY TO THE ORDER OF Consumers Grocery Company Twelve Thousand Dollars (\$12,000.00)

being part payment on and charge to account of
stock of merchandise San Diego Co-Operative Stores.
and fixtures at 426 Signed H. A. Floatin."

Market St.

618 5th St. and

1033 Broadway.

This draft was paid by the Pacific Co-Operative League; by paying to Consumers Grocery Company the sum of \$5,476.36 from the daily cash sales of the three stores thus reducing the inventory value; and on September 11, 1920 a draft was drawn in favor of the Consumers Grocery Company for \$3,140.02, being the balance due on the purchase price, which draft is Respondent's Exhibit 10, and is in words and figures as follows:

"PACIFIC CO-OPERATIVE LEAGUE. INC.

No. 8557.

236 Commercial St. San Francisco.

Sept. 11, 1920.

PAY TO THE ORDER OF Consumers Groc Com-
pany Thirty One Hundred Forty & 02/100 Dollars
(\$3140.02) and charge to account of

| | | |
|-----------------------------------|---|-------------------|
| being payment for |) | San Diego Branch. |
| settlement in full |) | Signed H. A. |
| subject to any minor adjustment.) |) | Floatin Mgr." |

This draft was paid by the Pacific Co-Operative League. That on the 11th day of September, 1920 and at the time said final payment was made, a Bill of Sale was made and executed by the Consumers Grocery Company and delivered to H.A.Floatin, which is Respondent's Exhibit 3, and is in words and figures as follows to-wit:

“KNOW ALL MEN BY THESE PRESENTS

That CONSUMERS GROCERY CO. (Inc) 426 Market St., the parties of the first part, for and in consideration of the sum of TEN Dollars..... of the United States of America, to us in hand paid by THE PACIFIC CO-OPERATIVE LEAGUE (Inc.), the parties of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey, unto the said parties of the second part, its executors, administrators and assigns, One Ford delivery car, and the furniture and fixtures and grocery stock located in stores at
426 Market St.

620 Fifth St.

1033 Broadway

(this bill of sale void in case of failure of the Pacific Co-Operative League to pay draft drawn on San Francisco this date.)

TO HAVE AND TO HOLD the same to the said parties of the second part, its executors, administrators and assigns forever.

And they do for their heirs, executors and administrators, covenant and agree to and with the said parties of the second part, its executors, administrators and assigns, to warrant and defend the sale of said property, goods and chattels, hereby made unto the said parties of the second part, its executors, administrators and assigns, against all and every person or persons, whomsoever, lawfully claiming or to claim the same.

WITNESS our hands and seal this 11th day of
Sept. 1920.

CONSUMERS GROCERY CO.,

426 Market St.

Justin Hammond, Pres.

(Reverse Side)

BILL OF SALE

Consumers Groc Co. to Pacific Co-Operative League.

Dated September 11th, 1920.”

16.

That said bill of sale was not recorded and no notice of its execution and delivery was ever given to the local organization, or to its Board of Directors.

17.

That at the time said stores were purchased, and particularly on September 11, 1920, there had been paid upon subscriptions above described, the sum of \$15,393.00; that subsequently payments were made on said subscriptions to loan capital making a total of \$20,363.88, which sums were received by the Pacific Co-Operative League.

18.

That in addition to the moneys so paid on subscriptions to loan capital, \$2,000.00 had been received and delivered to Pacific Co-Operative League upon a note executed by the local organization signed by its officers and endorsed by the Pacific Co-Operative League to one W. Templeton Johnson; that said note was subsequently paid.

19.

That on September 11, 1920, the three stores purchased from the Consumers Grocery Company,

were opened under the management of H. A. Floatin, and for a short time operated under the name of Consumers Grocery Company, the name being changed shortly afterwards to the Pacific Co-Operative League Store, San Diego Branch.

20.

That at the time said stores were purchased the local organization had a Board of Directors which met once each week and continued so to meet. At these meetings the manager of the stores was usually present, and made informal reports, and once a month had a formal report. That the local Board of Directors gave no orders to the local manager as to the way in which he should manage the stores, but discussed with him certain questions and did order certain small repairs made and did request the local manager to pay certain small bills incurred by the local organization for their entertainment and for stationery used by the Board of Directors.

21.

That subsequent to the purchase of said stores the name Pacific Co-Operative League Store, San Diego Branch, was placed on the three stores as shown by Petitioner's Exhibit 6. That on or about October 1920, a sign was placed in front on store No. 3 by Mr. Johnson with the knowledge and consent of H. A. Floatin, the manager in charge which is in words and figures as follows:.

"To reduce the cost of living. This store owned by 550 families. Ask the clerk how you can join them."

The sign was placed there because a labor parade was to pass the store.

22.

That on or about January 20, 1921 the local organization adopted By-Laws for its government which By-Laws were approved by the Pacific Co-Operative League.

23.

That the manager of said San Diego stores was paid from the receipts of said stores, some of it being paid from the daily cash receipts, and other times being paid by check from the home office at San Francisco.

24.

That the merchandise purchased for said San Diego stores was paid for by check of the local manager from the money received at said stores and deposited in a bank in San Diego in the name of the Pacific Co-Operative League.

25.

That the manager of said Diego stores was bonded to the Pacific Co-Operative League.

26.

That the insurance on said San Diego stores was issued in the name of Pacific Co-Operative League.

27.

That the assessment for taxes on said San Diego stores was returned in the name of Pacific Co-Operative League.

28.

That no notice of the facts set forth in Findings

numbered 26 and 27 was brought to the Board of Directors of the local organization.

29.

That the amount to be paid the subscriber of loan capital for interest and dividends or rebate on purchases was computed by the Board of Directors of the local organization from data submitted to them by the manager of the stores; that this computation was forwarded to the Pacific Co-Operative League home office for approval. That thereafter dividend and interest cards were sent to the persons entitled thereto in form as Respondent's Exhibit 4, which is as follows:

"407. PACIFIC CO-OPERATIVE LEAGUE.

San Francisco. Jan. 1- 1921.

To the Manager of San Diego Branch.

Pay to or credit Sam F. Williams \$1.54 One & 54/100 Dollars, being in full payment of dividend and interest to Dec. 31, 1920.

PACIFIC CO-OPERATIVE LEAGUE

E. Ames.

San Diego Branch.

It can be exchanged for cash.

Member will strike out the line not wanted and sign here in full settlement. WHEN REDEEMED MANAGER MUST FORWARD WITH DAILY REPORT.

(On reverse side.)

(1) ADDED CAPITAL.

Please place to credit of loan capital in my name.

Name

(2) Redeemed in cash.

Name Sam F. Williams.

(3) REDEEMED IN MDSE.

Name

“35 To be cashed at store only.

PACIFIC CO-OPERATIVE LEAGUE.

San Francisco. Jan 1, 1921.

To the manager of San Diego Branch.

Pay to, or Credit Chas. J. Eason \$2.23 Two & 23/100
Dollars being in full payment of dividend and in-
terest to Dec. 31, 1920.

2. It can be taken out in trade by member.

PACIFIC CO-OPERATIVE LEAGUE.

E. Ames. D.

San Diego Branch.

Member will strike out the
line not wanted and sign here
in full settlement.

Chas. J. Eason.

WHEN REDEEMED MANAGER MUST FOR-
WARD WITH DAILY REPORT.

(Reverse side)

(1) ADDED CAPITAL

Please place to credit of loan capital in my name.

Name

(2) REDEEMED IN CASH.

Name

(3) REDEEMED IN MDSE.

Name Chas. J. Eason.”

30.

That the San Diego stores were conducted and operated at a profit.

31.

That on or about the 1st day of November, 1921, the Pacific Co-Operative League, without the consent or knowledge of the Board of Directors of the local organization, or its members, conveyed to the Pacific Co-Operative League stores all of its assets.

32

That on or about the 15th day of December, 1921, the local organization by action of its Board of Directors passed a Resolution severing its relation with the Pacific Co-Operative League, and at a members meeting on December 15, 1921, adopted new By-Laws and changed its name to San Diego Co-Operative Association.

33.

That subsequent to the transfer of the assets of the Pacific Co-Operative League to the Pacific Co-Operative League Stores, some of the holders of certificates of loan capital surrendered them to the Pacific Co-Operative League Stores in exchange for certificates of capital stock of the Pacific Co-Operative League Stores. That the Pacific Co-Operative League Stores is a corporation organized under and by virtue of the laws of the State of California.

34.

That on or about the 11th day of February, 1922, the Commissioner of Corporations of the State of California made an order revoking the permit of Pacific

Co-Operative League Stores to issue stock. This order of revocation is filed herewith and marked Petitioner's Exhibit

35.

That there was no obligation upon the Pacific Co-Operative League to repay to the subscribers the loan capital, except upon dissolution of the stores, and then prorata as the then value of the stores appeared; that there was no provision for the sale or disposition of the San Diego stores.

36.

That the Pacific Co-Operative League was to receive no financial compensation for its services rendered to the San Diego stores, except the \$10.00 which was subscribed as the fee for associate membership in the League.

37.

That the Pacific Co-Operative League and the Pacific Co-Operative League Stores have heretofore been adjudicated involuntary bankrupts.

38.

That the three stores in San Diego above described are now in the possession of Wm. H. Moore, as Ancillary Receiver of the Pacific Co-Operative League Stores.

Respectfully submitted.

Glen H. Munkelt.

Special Master.

(NOTE) -

It being the opinion of the attorneys representing the several parties to this proceeding that the Special Master should make no conclusions of law or recommendation as to the legal effect of the facts found, this opinion has been conformed to. The Special Master has not made the findings directly on the allegations of the pleadings, for the reason that findings in such form would involve a mixed question of law and fact. The Special Master has attempted to find the facts as established by the evidence in order that the attorneys for the respective parties may present their contentions as to what the legal conclusion is, based upon the facts found.

Glen H. Munkelt.

Special Master.

(Endorsed): FILED May 16, 1922. Chas. N. Williams, Clerk By Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

REPORT AND RECOMMENDATION OF
SPECIAL MASTER

To the Honorable Judge of the District Court of the United States For the Southern District of California, Southern Division:

I, Glen H. Munkelt, the undersigned, to whom as Special Master, the application of the San Diego Co-Operative Association for an order directing the Ancillary Receiver in the above entitled matter to de-

liver to petitioner certain property described in said petition, and the order to show cause issued upon petition of said Ancillary Receiver, and the issues raised by said pleadings, were duly referred by order dated April 15, 1922, for examination, testimony and report, and as to which said order of reference the undersigned has made and filed herein his report, and a second order having been made in the above entitled proceeding on or about May 24, 1922, referring said matters and issues back to the undersigned for further report and recommendation,

Now, therefore, in compliance with said second order of reference and as a supplemental report, the former report being hereby referred to and incorporated and considered a part of this report, do hereby report as follows:

That on the 8th day of June, 1922, Elmer J. Hertel, Esq., and Marcus W. Robbins, Esq., appearing for petitioner herein, and Norman A. Bailie, Esq., appearing for the respondent herein, appeared before the undersigned and presented their arguments as to the findings heretofore filed, and as to the law applicable to this proceeding.

And from such hearing the Special Master makes the following report:

1.

That finding No. 5 of the Master's report heretofore filed herein be amended as follows:

By adding after the word "stores" in the last line on page 5 the words "in the manner provided by the By-laws of said Pacific Co-Operative League".

2.

That finding No. 10 of the Master's report heretofore filed be amended as follows:

By adding after the word "Diego" in line 5 of said finding the words "said subscriptions were signed by the subscribers individually in form similar to that set forth in finding No. 7".

3.

That finding No. 21 of the Master's report heretofore filed be amended by adding at the end thereof the words "that there was no sign or signs of similar character or import placed on the other two stores".

4.

That finding No. 24 of the Master's report heretofore filed be amended by adding to the end thereof the words "that the moneys received from the San Diego stores were deposited in a bank in San Diego, and subsequently transferred to San Francisco where it was deposited in the general account of the Pacific Co-Operative League; that the manner of handling said money and its deposit in respective banks was not known to the owners of the Loan Capital Certificates nor to the Board of Directors of the local organization".

5.

The special Master further reports that the San Diego Co-operative Association is an organization of men and women in San Diego, California, who have joined together for the purpose of co-operative buying and said association was formed on or about November 22, 1919, and that subsequent thereto the members of

said association entered into an agreement with the Pacific Co-operative League, a co-operative business association, to act as their agent and representative to receive all the moneys arising out of the conduct of said business, to disburse the same for the benefit of said business in payment of bills and expenses contracted in the operation of said business, to keep the books and accounts of said stores, to disburse and distribute the profits of said stores as provided in the By-Laws of the Pacific Co-operative League.

That at the time of the establishing of said relation between the San Diego Co-operative Association and the Pacific Co-operative League it was understood and agreed that the San Diego Co-operative Association should elect a Board of Directors to co-operate with the Pacific Co-operative League; the said Board of Directors was to advise with and consult with said Pacific Co-operative League and that the Pacific Co-operative League was to manage the three stores described in Schedule "A" attached to the Petition in Reclamation.

That the said Pacific Co-operative League has managed said stores and has appointed its own manager, has not received advice from the Board of Directors of the San Diego Co-operative Association, except as to minor details; that on or about the 1st day of November, 1921, the Pacific Co-operative League sold the Pacific Co-operative League Stores, Inc., the property mentioned in Schedule "A"; that the said sale and transfer was without the knowledge or consent of the San Diego Co-operative Association. That on or

about the 15th day of December, 1921, the San Diego Co-operative Association discharged said Pacific Co-operative League as its agent and representative, and appointed the Board of Directors of the San Diego Co-operative Association as its trustee to conduct the business of the said three stores in their behalf. That the names of the persons elected as their trustee were as follows, to-wit: Charles J. Eason, Ed. Crolic, Stanley M. Gue, Charles B. Lynch, Charles J. Mayes, Mrs. P.T. Mannen and Marcus W. Robbins.

6.

That the owners and holders of the Loan Capital Certificates hereinbefore referred to and described, are the owners of the property described in Schedule "A" in the Petition in Reclamation, subject to the rights conferred upon the Pacific Co-operative League to manage said property for their benefit. That the petitioner as the representative of the owners and holders of said Loan Capital Certificates are entitled to possession of said property.

7.

That the allegations in Paragraph Fifth of the Petition in Reclamation are true.

8.

That the allegations in Paragraph I of the Petition of the Order to Show Cause are true.

9.

That the allegations in Paragraph II of the Petition in the Order to Show Cause are true.

10.

That the allegations in Paragraph III of the Petition in the Order to Show Cause are true.

11.

That the said San Diego Co-operative Association has some right, title and interest in and to the three stores herein discussed and described in Schedule "A" attached to the Petition in Reclamation.

That the said three stores are not the property of said Bankrupt.

From the foregoing the Special Master as Conclusions of Law reports:

That the three stores described in Schedule "A" attached to the Petition in Reclamation were purchased with the money subscribed by the owners and holders of the Loan Capital Certificates which money was subscribed for the purpose of purchasing said property, with the agreement that the Pacific Co-operative League should manage and operate said stores for the benefit of the owners and holders of the Loan Capital Certificates; and to distribute to the owners and holders of said Loan Capital Certificates the profits of said stores by first paying to said owners and holders of said certificates interest thereon at the rate of 5% per annum, and second, to divide the profits of said stores among the owners and holders of said Loan Capital Certificates in proportion to their purchasers at said stores. That the Pacific Co-operative League by its insolvency and its present status is incapacitated to act as agent and representative of the owners and holders of Loan Capital Certificates and to manage and operate the said three stores in accordance with the terms of its By-Laws, and its agreement with the owners and holders of Loan Capital

Certificates. That as the representative of the owners and holders of Loan Capital Certificates, the petitioner herein and the trustee appointed by it are entitled to possession of said three stores as trustee for the owners and holders of the said Loan Capital Certificates as their interests appear.

That at all times herein the Pacific Co-operative League has had the legal title to said three stores. That the beneficial interest in said stores has at all times herein mentioned been in the owners and holders of the said Loan Capital Certificates.

That the respondents in the Order to Show Cause have shown good and sufficient reason why the prayer in the Petition for the Order to Show Cause should not be granted.

For the foregoing reasons I am of the opinion that the prayer in the Petition for the Order to Show Cause should be denied; that it be decreed that the Ancillary Receiver in Bankruptcy, the respondent in the petition in Reclamation, has no interest in the three said stores and that the said Ancillary Receiver is not entitled to the possession of the said three stores; that an order be made delivering said three stores to the representative of the owners and holders of the Loan Capital Certificates.

I state my fees and expenses as Special Master as follows:

| | |
|--|----------|
| To 4 days of taking and receiving testimony (April 24-25-26-27) at \$50.00 per day, | \$200.00 |
| To 2½ days reading reporter's transcript of testimony and exhibits, and preparing re- port as Special Master at \$50.00 per day, | 125.00 |

| | |
|---|----------|
| To stenographic expense in preparing report as Special Master, 59 folios at 30c per folio, | 17.70 |
| To one-half day hearing discussions on questions of law June 8, 1922, and preparation of report and recommendation, June 13 and 14, 1922, | 75.00 |
| To stenographic expense in preparing second report as Special Master, 21 folios at 30c per folio, | \$ 6.30 |
| | <hr/> |
| Total..... | \$424.00 |

I hereby respectfully submit my report, and request that an order be made directing William H. Moore, Jr., Ancillary Receiver in the above entitled matter to forthwith pay fees and expenses of your Special Master as herein reported.

Respectfully submitted this 15th day of June, 1922.

Glen H. Munkelt

Special Master.

(Endorsed): Filed Jun. 16 1922 Chas. N. Williams,
Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

EXCEPTIONS TO THE REPORT OF SPECIAL
MASTER—

COMES NOW Wm. H. Moore, Jr., Ancillary Receiver, and files the following exceptions to the Report of the Special Master on file herein:

1.

Said Ancillary Receiver excepts to Finding No. 1, to the effect that "on November 22, 1919, and "for sometime prior thereto, certain persons in San "Diego, California, had associated themselves together "for the purpose of co-operative buying; that said "association was unincorporated and named itself 'San "Diego Consumers Co-operative Association'; that said "organization with a larger membership continued "during the time herein under discussion, the name of "said organization being changed at one time to the "San Diego Co-operative Association, subsequently "changed to the Pacific Co-operative League, San "Diego Branch, and again changed to the present name "of petitioner, the San Diego Co-operative Association", for the reason that the evidence shows, without contradiction, that there was no organization whatsoever on the 22nd day of November, 1919, but an informal meeting of certain persons to discuss "co-operation".

2.

Said Ancillary Receiver excepts to Finding No. 5 and states that there should be added to said Finding a statement to the effect that "at least four of the "seven directors of the local Association understood "from the beginning that the stores were to be owned "and controlled by the Pacific Co-operative League."

3.

Said Ancillary Receiver excepts to Finding No. 9 in that it does not state that at least four of the seven directors of the local Association, together with at least one other member, understood from the begin-

ning that the stores were to be owned and controlled by the Pacific Co-operative League.

4.

Said Ancillary Receiver excepts to Finding No. 10 for the reason that it fails to state as the evidence shows that H. A. Floatin and A. E. O. F. Ames, of the Pacific Cooperative League, came down to San Diego and approved of the purchase of the three stores in question.

5.

Said Ancillary Receiver excepts to Finding No. 11 in that it fails to find that at the time of the purchase of said stores, to wit: on the 11th day of September, 1920, and at all times prior thereto, the total amount of loan capital paid in was less than the amount necessary to purchase and pay for said stores and that the entire amount of loan capital paid in up to and including the 11th day of September, 1920, was the sum of \$15,393.00.

6.

Said Ancillary Receiver excepts to Finding No. 13 in so far as it finds that "the local organization nor "its directors had notice of the executing and recording "of said notice of sale except as would be legally "implied from recordation", for the reason that under the law the recordation of the notice of sale was constructive notice to every person interested.

7.

Said Ancillary Receiver excepts to Finding No. 18 in that it fails to find that said note of \$2000.00 referred to therein was paid by the Pacific Co-operative League.

8.

Said Ancillary Receiver excepts to Finding No. 20 in that it fails to find as the evidence shows that at all times five members of the Board of Directors of the local organization knew that the stores were owned and controlled by the Pacific Co-operative League.

9.

Said Ancillary Receiver excepts to Finding No. 23 for the reason that the evidence shows that from the organization of the stores until after the hiring of Mr. Huggins as Manager, the Manager was always paid by drafts drawn on the Pacific Co-operative League in San Francisco, which said drafts were paid by the checks of the Pacific Co-operative League.

10.

Said Ancillary Receiver excepts to Finding No. 24 for the reason that it fails to find that from the organization of the stores and for many months thereafter all bills for merchandise purchased were paid by drafts on the Pacific Co-operative League in San Francisco, which drafts were paid by the checks of the Pacific Co-operative League from its general fund and that thereafter and after the hiring of Mr. Huggins as Manager his name was added to the names of the officers of the Pacific Co-operative League for the purpose of enabling him to check against the account of the Pacific Co-operative League in San Diego and that at all times the bank account from said stores stood in the name of Pacific Co-operative League and not otherwise, and that at least five members of the Board of Directors of the local

organization at all times knew the manner of the handling of said moneys.

11.

Said Ancillary Receiver excepts to Finding No. 26 in that it fails to find that said insurance was paid for by the check of the Pacific Co-operative League from its general funds, and that neither the local organization nor its Board of Directors, nor any of them, made any effort whatever to have said property insured in the name of the local organization, or at all.

12.

Said Ancillary Receiver excepts to Finding No. 27 in that it fails to find that for the years 1921 and 1922 said property was assessed to the Pacific Co-operative League and the tax paid by the Pacific Co-operative League, and that neither the local organization nor its Board of Directors nor any of the subscribers for Loan Capital ever made any attempt to have said property assessed in the name of said local organization.

13.

Said Ancillary Receiver excepts to Finding No. 28 for the reason that it fails to find that the local organization and its Board of Directors had constructive notice of the assessment of said property.

14.

Said Ancillary Receiver excepts to Finding No. 30 in that it fails to find that the investment in said stores was at all times greater than the amount of Loan Capital subscribed and paid.

15.

Said Ancillary Receiver excepts to Finding No. 31 in that it fails to find that the majority of the Board of Directors of the local organization consented to said transfer and exchanged their Loan Capital Certificates for capital stock of the Pacific Co-operative League Stores.

16.

Said Ancillary Receiver excepts to Finding No. 33 for the reason that it fails to find that 275 out of a total of 550 loan capital subscribers exchanged their Certificates for stock in the Pacific Co-operative League Stores.

17.

Said Ancillary Receiver further excepts to the report of said Special Master for the reason that it fails to find that there are creditors of both the Pacific Co-operative League and the Pacific Co-operative League Stores and because it fails to find that at all times the creditors of said Pacific Co-operative League and said Pacific Co-operative League Stores were paid out of the general funds of the Pacific Co-operative League and the Pacific Co-operative League Stores by the checks of said companies.

18.

Said Ancillary Receiver excepts to Finding No. 5 of the Supplemental Report of said Special Master for the reason that it finds that the so-called local organization was formed on or about November 22, 1919, and further because it finds that the "members" of said association entered into an agreement with

“the Pacific Co-operative League, a co-operative business association, to act as their agent and representative to receive all the moneys arising out of the conduct of said business, to disburse the same for the benefit of said business in payment of bills and expenses contracted in the operation of said business, to keep the books and accounts of said stores, to disburse and distribute the profits of said stores as provided in the By-Laws of the Pacific Co-operative League”, and said Receiver submits that there is no evidence whatsoever to establish the relation of principal and agent between the so-called local organization and the Pacific Cooperative League.

Said Ancillary Receiver further excepts to said Finding on the ground that there is no evidence whatsoever that the Pacific Co-operative League was to “manage” the three stores described in said petition.

Said Ancillary Receiver further excepts to said Finding No. 5 on the ground that it fails to find that the majority of the Board of Directors of the local organization consented to the transfer to the Pacific Co-operative League Stores, Inc. and that 275 of the 550 loan capital subscribers transferred their loan Capital Certificates to stock in the Pacific Co-operative League Stores.

Said Ancillary Receiver further excepts to said Finding on the ground that there is no evidence to show that the Pacific Co-operative League was ever the agent of the local association or the representative thereof and fails to find that the attempted “discharge” of the Pacific Co-operative League and Pa-

cific Co-operative League Stores by the local organization was null and void and of no effect.

19.

Said Ancillary Receiver excepts to Finding No. 6 of the Supplemental Report in that it finds that the owners and holders of Loan Capital Certificates are the owners of property described in Schedule A of the Petition of Reclamation, and inasmuch as it finds that the petitioner is the representative of the owners and holders of Loan Capital Certificates and in that it finds that said local association is entitled to the possession of said property, or any of it.

20.

Said Ancillary Receiver excepts to Finding No. 7 in that it finds that said property has "not been seized by virtue of an execution or warrant of attachment from or through which your petitioner has derived title to said chattels", for the reason that the Ancillary Receiver representing the Trustee in Bankruptcy stands in the position of a creditor holding a lien by legal or equitable proceedings against said property.

21.

Said Ancillary Receiver excepts to Finding No. 11 in the Supplemental Report of said Special Master in the following particulars:

(a) There is no evidence that said San Diego Co-operative Association has any right, title or interest in or to the three stores described in Schedule A and attached to the Petition in Reclamation;

(b) The evidence shows without conflict that the stores are the property of the bankrupt.

22.

Said Ancillary Receiver further excepts to said Findings of said Special Master on the grounds that he failed to find that the Pacific Co-operative League took out and paid for compensation insurance on all the employees in its own name and that neither the local association nor any of its members ever took out any compensation insurance for the employees.

23.

Said Ancillary Receiver further excepts to said report of said Special Master because said Special Master failed to find that the proceeds of said Loan Capital subscriptions were deposited in a bank in San Diego in the name of the Pacific Co-operative League and withdrawn therefrom by checks of the Pacific Co-operative League and deposited in San Francisco in the name of the Pacific Co-operative League, together with all the other funds of the Pacific Co-operative League from any and all sources, the same consisting of the loan capital from other stores, the proceeds of sales of merchandise from all stores, the proceeds of money borrowed and certain profits made by the Pacific CO-operative League in the way of commissions, also the proceeds of the sales of merchandise by the Pacific Co-operative League to all the stores, being approximately 45 in number, operated by the Pacific Co-operative League, and that all payments of money in the purchase of said stores were made from said common fund and not

otherwise, and furthermore that the evidence shows without conflict that the majority of the Board of Trustees of the San Diego Co-operative Association were at all times aware of the fact that the moneys were being so handled.

EXCEPTIONS TO CONCLUSIONS OF LAW:

24.

The said Ancillary Receiver excepts to the Conclusions of Law wherein the said Master finds as Conclusions of Law that the said stores were purchased with the money subscribed by the owners and holders of Loan Capital Certificates.

25.

Said Ancillary Receiver excepts to said Conclusions wherein the Master finds that there was an agreement between the local association or the holders of Loan Capital Certificates to the effect that the Pacific Co-operative League should manage or operate said stores for the benefit of the owners and holders of the Loan Capital Certificates.

26.

Said Ancillary Receiver further excepts to said Conclusions of Law wherein the Master finds that said Pacific Co-operative League agreed to distribute to the owners and holders of the Loan Capital Certificates the profits of said stores by first paying to said owners and holders of said Certificates interest thereon at the rate of five per cent per annum, and second, by dividing the profits of said stores among the owners and holders of said Loan Capital Certificates in proportion to their purchases at said stores, or

otherwise, and said Master erred in not finding as a Conclusion of Law that the Ancillary Receiver representing the Trustee in Bankruptcy herein in his position as a creditor holding a lien on said stores by legal or equitable proceedings is entitled to the possession of said stores.

27.

Said Ancillary Receiver further excepts to said Conclusions of Law wherein the Master finds that said Pacific Co-operative League ever acted as agent or representative of the owners or holders of Loan Capital Certificates either in the management or operation of said stores, or otherwise or at all, and further that said Master erred in finding that the petitioners in said petition in reclamation named were the representatives or the representative of the owners or holders of Loan Capital Certificates, and that said Special Master further erred in finding that the petitioner, to wit: the San Diego Co-operative Association, is entitled to the possession of said three stores either as Trustee for the owners or holders of said Loan Capital Certificates, or otherwise or at all.

28.

Said Ancillary Receiver further excepts to said Conclusions of Law wherein said Special Master finds that the holders of Loan Capital Certificates have any beneficial interest in said stores.

29.

Said Ancillary Receiver further excepts to said Conclusions of Law wherein the Special Master finds that said petitioner, to wit: the San Diego Co-operative

Association, has shown good or sufficient or any reason whatsoever why the prayer of the petition for the order to show cause of the Ancillary Receiver herein should not be granted.

30.

Said Ancillary Receiver further excepts to said report wherein it recommends that it be decreed that the Ancillary Receiver has no interest in said three stores and that said Ancillary Receiver is not entitled to the possession of said stores, and said Ancillary Receiver excepts to that portion of the report wherein it is recommended that an order be made delivering said three stores to the representative of the owners and holders of the Loan Capital Certificates.

WHEREFORE, said Ancillary Receiver prays that a day may be fixed for the hearing of the Report of said Special Master and of these Exceptions thereto, and that upon the hearing thereof a decree be made and entered to the effect that Wm. H. Moore, Jr., as Ancillary Receiver herein, is the owner and entitled to the immediate possession of all of the stores described in Schedule A attached to the Petition in Reclamation herein.

W. T. Craig

Norman A. Bailie

Attorneys for Ancillary Receiver.

(Endorsed): Filed Jun 26, 1922 Chas. N. Williams, Clerk By Louis J. Somers Deputy

At a stated term, to-wit: the July, A. D., 1922 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, on Thursday, the twenty-third day of November, in the year of our Lord one thousand nine hundred and twenty-two;

Present: The Honorable Benjamin F. Bledsoe,
District Judge.

In the matter of the petition of)
) No. F 99 Equity.
 Meyer Cloak & Suit Co. etc. et al.)

This matter having heretofore been submitted to the court for its consideration and decision, upon the report of the special master and the exceptions thereto, and said matter having been duly considered by the court and the court being fully advised in the premises, it is now by the court ordered that all of the exceptions to the master's report be and the same hereby are overruled and that pursuant to Federal Equity rule 67 there is hereby taxed as against the receiver the sum of \$5.00 for each of such exceptions so taken and overruled, amounting in all to the sum of \$150.00; it is thereupon by the court ordered that the report of the special master be and the same hereby is confirmed and that the property involved, consisting of three grocery stores, be returned to the San Diego Co-Operative Association, as prayed for in its petition therefor; counsel for said Association to prepare the appropriate Order.

(Testimony of Charles Henry Peltcher.)

[TITLE OF COURT AND CAUSE.]

STATEMENT OF EVIDENCE UNDER
EQUITY RULE 75.

TESTIMONY of CHARLES HENRY PELTCHER for Petitioners.

CHARLES HENRY PELTCHER, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is Charles Henry Peltcher. I am a plumber, living at 1866 Abbott Street, Ocean Beach. I served on a committee for the purpose of investigating the feasibility of forming a co-operative association at San Diego. The Chairman of the San Diego Federated Trades appointed the Committee. The Committee reported that it would be advisable to organize an Educational Society, which was done. The Society elected a Chairman, Secretary and Executive Committee. The name of the organization was the San Diego Consumers' Co-Operative Association. This was the beginning of the organization that is now known as the San Diego Co-Operative Association. Later we were introduced to representatives of the Pacific Co-Operative League. We had meetings with Mr. A. A. Johnson, a representative of said League some time in April, 1920. Mr. Johnson spoke at a meeting of the San Diego Co-Operative Association, the subject of his talk being "General Co-operation." He told the

(Testimony of Charles Henry Peltcher.)

membership that the funds we would subscribe would be used to purchase a store, and we would "own and control a store in San Diego." He was then addressing members who had not subscribed. Each member subscribed the amount of \$50.00, to be raised as one payment or several payments, these payments to be deposited with the local committee and used to purchase or establish a store in San Diego. It was definitely stated that the \$50.00 subscribed by the membership was to be paid as membership in the Pacific Co-operative League, but I don't know where it was to be deposited. It was positively stated that it was to be for our own benefit and profit; that the \$50.00 was to purchase property that would be the property of the San Diego Association. The \$50.00 subscribed was divided into two parts—one of \$10.00 and one of \$40.00. Ten dollars was to go for an educational campaign. I understood that the balance of the money was to be used in buying membership in the San Diego Co-operative League Store. Mr. Johnson did not tell us at that time just how the deal would be handled. He told us that the members of the San Diego Co-operative League were to buy the stores and were to own them themselves. I had given my subscription before that time. In due time there was issued to me an associated membership certificate in the Pacific Co-operative League. I did not have anything to do personally with the purchase of the stores. I received five per cent. interest from the local stores, as we were told by Mr. Johnson.

(Testimony of John A. Hadland.)

TESTIMONY OF JOHN A. HADLAND for Petitioners.

JOHN A. HADLAND, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I came to San Diego on October 13, 1919. I assisted in starting a co-operative organization there. I talked at several meetings and we finally organized the San Diego Consumers Co-operative Association about the 20th of November, 1919. I had met Mr. Ames, who, I understood, was General Manager of the Pacific Co-operative League before I went to San Diego. At this meeting Mr. Ames, President of the Pacific Co-Operative League, spoke to me on the possibilities of doing work on co-operation in San Diego and explained the League plan to me. Mr. Ames stated that the plan of the League was to promote the idea of co-operation throughout the country, to be financed by a \$10.00 associate membership fee which would be collected in any field where the League organized. This \$10.00 associate membership fee would keep or finance his educational institution to train managers to draw from to open up stores; to publish an organ spreading the work of co-operation; to assist or to give advice to branches and stores or any associations opening up on the matter of co-operation. The main theory was to pay to have trained managers to furnish stores when called upon.

(Testimony of John A. Hadland.)

The other tack of the organization of capital was to organize or run the particular stores wherever they happened to be. In some sections these have been organized on \$50.00 basis, some on \$40.00, and some on \$100.00 basis; but in this instance \$40.00 was to be goods on the shelves of the store, or, in other words, the property of the San Diego store, the \$10.00 membership being for services rendered to them by this store.

In addition to that if a store should vote, the rule was at that time a store should vote 25% of its capital stock to a wholesale known as Co-Operative Wholesale Company of San Francisco, a separate organization.

I repeated the statements made by Mr. Ames on the League plan to prospective members at public meetings and personally. I also distributed about fifty copies of the by-laws of the Pacific Co-Operative League given to me by Mr. Ames in Seattle. Later I distributed additional by-laws of the League and other pamphlets explaining the League plan set to me by Mr. Ames after arrival in San Diego. I did not discuss with him the question of a Branch at San Diego. I circulated a paper for subscriptions. The paper had printed on it the following:

"This list is in charge of.....No. 12.
SAN DIEGO CONSUMERS CO-OPERATIVE AS-
SOCIATION.

Labor Temple, 621 Sixth Street.

San Diego, California, Jan 26th, 1920.

(Testimony of John A. Hadland.)

We the undersigned hereby agree to subscribe for membership in the San Diego Branch Co-Operative store, and agree to pay thereon the sum of \$50.00 (fifty dollars) in cash or installments on receiving notice of cancellation from Mr. Johnson our BONDED ORGANIZER."

The subscribers to loan capital received a certificate, called a "loan capital" certificate, which was in the following form:

"CO-OPERATION.

Producer

Consumer.

The link that binds.

PACIFIC CO-OPERATIVE LEAGUE, Inc.

San Francisco, California.

Incorporated Oct. 13, 1913. Not operated for Profit.

CERTIFICATE OF LOAN CAPITAL

(without liability)

Receiver of George F. Gray,

(The holder hereby agrees) The sum of Forty &
(that this Certificate is lia-) 99/100 Dollars \$40.00, as
(ble to forfeiture in the) Loan Capital. This loan
(event the holder becomes) capital is to be invested in
(indebted to the Pacific) the Pacific Co-operative
(Co-operative League) League for the use of the
Co-operative Store at San
Diego, Calif. in accord-
ance with the By-Laws of
the Pacific Co-operative
League.

PACIFIC CO-OPERATIVE LEAGUE

Ernest O. F. Ames, President.

Attest: W. S. Huntington.

Registrar.

Dated, San Francisco, Cal. Aug. 30, 1920."

(Petitioner's Exhibit 9)

(Testimony of John A. Hadland.)

The subscription blank (Respondent's Exhibit 1) was in the following form:

"PACIFIC CO-OPERATIVE LEAGUE, INC.
No. 1752.

236 Commercial St., San Francisco.

Affiliated with the National and International Co-operatives, I, the undersigned, in order to assist in the establishment of the Co-OPERATIVE STORE (branch of Pacific Co-operative League), at San Diego, hereby subscribe the sum of \$. of which \$10.00 is for Associate Membership, and the balance for (State whether first payment on loan capital or new loan or installment) for investment by Pacific Co-operative League in said store to be entitled to interest and privileges according to the By-Laws.

I agree to pay of the above amount \$50.00 deposit with this application and the balance as follows:

| | |
|------------------------------|----------------------------|
| Amount Paid \$50.00 | Signed Chas. H. Peltcher |
| Associate Member \$. | Address, Ocean Beach, S.D. |
| Loan Capital \$. | |

Total \$. Received by A. G. Rogers,
A. Johnson,
San Francisco, Cal.
Feb. 14, 1920.

The white copy is the member's official receipt.

The blue copy must be returned to the central office with cash, check or deposit slip.

The yellow copy must be retained by the local store or field representative."

(Testimony of John A. Hadland.)

There was a verbal understanding that they were to receive 5% interest on the \$40.00. I believe they received some of this interest at 5%. It came by check, but I do not recall where it came from. They only received it once.

I do not know anything with regard to the operation of the stores except as a patron of the store. Mr. Ames handed me a copy of the By-Laws of the Pacific Co-operative League and I read them before I talked to the people in San Diego. So far as any statements I made to the San Diego Co-operative Association were concerned, they were taken from the By-Laws. I left San Diego about June 1, 1920, for Alaska in the employ of the Pacific Co-Operative League. I was ordered to Alaska by Mr. Ames and was sent a check for \$50.00 to pay my expenses to San Francisco where I reported to Mr. Ames.

“Page 2—By-Laws Pacific Co-Operative League

Second, the purpose for which this Association is formed is to promote the theory of co-operation and to advance its practical development, to establish a central bureau of information, education, publicity and general service, and to provide literature and lectures; to assist co-operative movement; to act as organizer, promoters, advisers and auditors for Co-Operative Association, and to assist dependent co-operative enterprises to work in unity with one another and to develop a federation of co-operative bodies for mutual advantage.”

(Testimony of Charles J. Eason.)

TESTIMONY OF CHARLES J. EASON for Petitioners.

CHARLES J. EASON, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I reside in San Diego and my business is that of postman. I am a member of the Board of Directors of the San Diego Co-Operative Association. I was present at a meeting in San Diego in the Labor Temple in February, 1920, at which Mr. A. A. Johnson made a talk. He told us he was representing the Pacific Co-operative League as an organizer; that our affiliations with the League would mean that we would become affiliated with other stores which were affiliated with the League, thereby combining our purchasing power; that the Pacific Co-operative League owned and operated a wholesale store in San Francisco; that we would receive the benefit of their buying, which would be much cheaper than we could buy through our own store without wholesale; that the League had a special system of accounting whereby the League could keep an accurate account of the store's business, an accurate account of the store's stock, and see that the store did not over-buy or stock up the store with goods not salable, and that the finances would be kept account of so that a manager could not default without being discovered; that auditors came from time to time to audit the store, and we would be furnished statements; that the

(Testimony of Charles J. Eason.)

League was educational; that its purpose was to help organize other groups; and by becoming members we thereby further the cause of co-operation in helping to organize other groups; that 25% of the capital was to be subscribed; at such time as there would be sufficient number of stores represented, a wholesale stock would be organized at Los Angeles, and each of the local groups subscribing 25% of their stock would be sufficient to organize a wholesale at Los Angeles and we would benefit from that. He told us that by becoming members of the Pacific Co-operative League we became affiliated with all the Leagues in the United States, and also International.

Money was collected and turned over to Organizer Johnson. That was one of the representations of the League; that it would take care of the finances and funds. The money was to be paid in to the Pacific Co-operative League and when sufficient money was received, it was to be used in buying a store. I was also present at a meeting addressed by Mr. Ames, President of the Pacific Co-Operative League in April or May, 1920, at the Labor Temple; that Mr. Ames spoke about co-operation in this part of the world; that he spoke about the 'Rochdale System', and spoke about the Pacific Co-Operative League being operated under the 'Rochdale System'; he also spoke, I remember, about the 25% of our capital to be invested in a wholesale and explained it by a chart on the board, drawing a circle and showing where at least twenty groups had started stores in some lo-

(Testimony of Charles J. Eason.)

cality, in several different points, and each by paying in 25% of the total capital would establish a wholesale. He also spoke in regard to the management of the store, their having expert managers to protect our interest in buying and accounting, and our finances could be protected. The name of the local organization was the San Diego Consumers Co-operative Association; later it was changed to the San Diego Co-Operative League; later still it was changed to the San Diego Branch of the Pacific Co-Operative League, and later still to the San Diego Co-Operative Association.

The San Diego Co-operative Association is a voluntary association, which has never filed with the County Clerk of San Diego County the necessary papers to show that it was doing business under a fictitious name. The name on the store was "Pacific Co-operative League, San Diego Branch." This name was placed on the stores four or five months after their purchase.

While I was Secretary of the San Diego Co-operative Association, the Association entered into an agreement to purchase certain grocery stores from the Consumers Grocery Company. Said Agreement was in the following form:

"CONTRACT AND AGREEMENT.

August 11, 1920.

1. THIS CONTRACT AND AGREEMENT entered into this date between the Consumers Grocery Company, Inc., hereinafter known as the party of the

(Testimony of Charles J. Eason.)

first part, and the San Diego Co-operative Association, party of the second part, Witness:

2. In receipt of \$1,000.00 (One Thousand Dollars) the party of the first part gives the party of the second part an option to purchase the stock and fixtures located at 426 Market Street, 618 Fifth Street and the S. W. Corner of Broadway and Eleventh St.

3. It is understood and agreed by both parties that this option expires in thirty (30) days from this date (August 11, 1920).

4. The party of the first part agrees to sell to the party of the second part the stock of merchandise located in the three stores enumerated in paragraph 2 at the present market price per pound, per dozen, per case or per gallon, at the wholesale jobbers price list of the City of San Diego.

5. Both parties agree to name the following committee of three men, who are in the wholesale grocery business, to price this inventory:

H. A. Floaten, or other representative of the Pacific Co-Operative League.

Charles P. Morse, of Klauber-Wangenheim Company.

H. G. Brohm, of Klauber-Wangenheim Company.

6. Both parties agree to the price that this Committee places on the merchandise as per agreement in paragraph 4.

7. The expense of the work done by this Committee to be divided equally between both parties.

(Testimony of Charles J. Eason.)

8. All insurance, public license, telephone, electric light, gas, rent and or any other prepaid item to be pro rated to the date of the consummation of the purchase.

9. All returnable containers to be taken up in the stock inventory at their cash value, such as barrels, bottles, jugs, cans and or any other items of such nature.

10. Paper bags, paper, wrapping twine, register tape and or any other material necessary to the operation of the grocery business to be taken up in the stock inventory at the present market price per pound, as per the wholesale price lists.

11. The party of the first part hereby acknowledges to the party of the second part receipt of \$1,000.00 (One Thousand Dollars), being payment for the option covered in paragraph 4.

12. At the time this sale is consummated, provided it is consummated within the time limit, it is understood by both parties that the One Thousand Dollars paid in by the party of the second part shall constitute the first payment.

13. It is understood and agreed by both parties that upon payment of an additional \$12,000.00 (Twelve Thousand Dollars) by the party of the second part to the party of the first part, making a total paid in of \$13,000.00 (Thirteen Thousand Dollars), the business of the three stores as enumerated in paragraph 2, will be turned over to the party of the second part.

(Testimony of Charles J. Eason.)

14. It is further understood and agreed that the unpaid balance over a total of \$13,000.00 (Thirteen Thousand Dollars), if there should be any, that the party of the second part will turn over to the party of the first part the total daily cash sales each day until the balance is paid in full; in no event shall the purchase price exceed the sum of \$15,000.00 (Fifteen Thousand Dollars).

15. In the event that the stock and fixtures should inventory less than the amount paid in, namely, \$13,000.00 (Thirteen Thousand Dollars), by party of the second part, the party of the first part will give to the party of the second part a check covering the difference.

16. It is understood and agreed that the fixtures of the three stores enumerated in paragraph 2 shall be included in the inventory at \$5,000.00 (Five Thousand Dollars), the fixtures to be those as shown on the list attached to this agreement.

CONSUMERS GROCERY COMPANY INC.

By Justin W. Hammond

Justin W. Hammond
President.

SAN DIEGO CO-OPERATIVE ASSOCIATION,

By J. N. F. Bischoff Chas. J. Eason.

J N. F. Bischoff Chas. J. Eason.
President Secretary.

San Francisco, Cal.

The above Agreement approved
this date.

PACIFIC CO-OPERATIVE LEAGUE,

By_____."

(Testimony of Charles J. Eason.)

The Agreement is dated August 11, 1920, and was approved by the Pacific Co-Operative League. No person was present when the Notice of Sale, or Bill of Sale was executed except Mr. Hammond and Mr. Floaten. A Notice of Sale was recorded in San Diego County by the Consumers Grocery Company, from whom the three stores were purchased, stating that the Consumers Grocery Company intended to sell the stores to the Pacific Co-Operative League. Later a Bill of Sale was executed by the Consumers Grocery Company to the Pacific Co-Operative League. I subscribed \$50.00 to the Pacific Co-Operative League—\$10.00 for an Association Membership and \$40.00 subscribed as loan capital, to be invested in stores of the San Diego Branch. I received a certificate called a "loan capital" certificate. All who subscribed money in San Diego received certificates in the same form. There was approximately \$20,000.00 subscribed, all together.

I served on a Committee that was appointed by the San Diego Co-Operative Association to investigate the purchase of stores; Mr. Johnson, a representative of the Pacific Co-Operative League, went with us, but he was not an official member of the Committee. We went over the proposition submitted by Mr. Hammond of the Consumers' Grocery Company, and went through the stores. Mr. Johnson was present some of the time.

We also asked that Mr. Floaten, of the Pacific Co-Operative League be sent down to look the stores

(Testimony of Charles J. Eason.)

over, as we felt we were inexperienced and that we would use one of the agencies which the League promised to give us in making a wise selection. As he reported that he thought the stores were a good buy we made a further effort to raise more loan capital, and then entered into negotiations with Mr. Hammond and were finally instructed to sign the contract for the purchase of the stores, which we did.

The following from the Minutes of the Directors meeting of the San Diego Co-Operative League August 9, 1920.

“Organizer Johnson stated: That Mr. Hammond, the proprietor of the Consumers’ Grocery Company’s stores, requested that we give him a definite answer in regard to our intention of purchasing the stores. Mr. Johnson also reported: That up to the present time only \$13,000.00 of the loan capital had been paid in, this amount includes the \$2,000 special loan of the Carpenters’ Union. In view of this fact it will be necessary for the Consumers’ Grocery Company to reduce their stock to \$14,000 before we could purchase it.

“Moved by Director Rogers, seconded by Director Barnes that the entire Board of Directors act as a Committee to make the necessary arrangements for the purchase of the three stores of the Consumers’ Grocery Company, and that the acts of the majority of the Committee be binding. Motion carried.

(Testimony of Charles J. Eason.)

"The President stated that unless objection was made, the consent of the Board of Directors, hereby granted, authorizing the President and Secretary to draw on the Pacific Co-Operative League for \$1,000.00 in favor of the Consumers' Grocery Company, this payment being necessary to the binding of the purchase agreement for the three stores this payment not to be made unless the purchase terms are satisfactory to the Committee. There being no objection it was agreed to.

"Moved by Director Webster, seconded by Director Barnes; that notice be sent to the Pacific Co-Operative League of the purchase of the stores and that they be requested to send a League representative here to superintend their opening. Motion carried."

Mr. Floaten came down and looked over the stores and reported that he thought the stores were a good buy.

The stores were actually paid for by a draft on San Francisco on the Pacific Co-operative League in favor of the Consumers Grocery Company. A telegram was sent by J. N. Bischoff, President of the San Diego Association, to the Pacific Co-operative League requesting a draft for the initial \$1,000.00 payment. The Pacific Co-Operative League did not furnish any capital whatever to purchase the stores. The money on loan capital certificates was paid to Mr. Johnson. It was deposited in the Security Bank in San Diego

(Testimony of Charles J. Eason.)

and was subject to the check of the Pacific Co-Operative League. It was deposited in two accounts there but the Cashier told Mr. Eason that Mr. Ames had told him to have but one account there, and that was without the permission of the San Diego Association or any knowledge on their part whatever; it was supposed to be held in trust by the Pacific Co-operative League for the San Diego Association, subject to their check. The Board of Directors of the local Association discussed legal finances at its meetings and the necessity of the members paying in their loan capital. Two Thousand Dollars was borrowed from the Carpenters' Union. President Bischoff reported a special loan of \$2,000.00 to the League by Local #1296 of the Carpenters' Union. I was not present when the deal was finally closed and the Bill of Sale delivered. I do not know where the Bill of Sale was delivered, or if it was ever delivered. I received one payment of interest on my loan capital certificate.

During the time I was Secretary and Treasurer of the San Diego Co-Operative Association, a dividend or rebate was declared. From the minutes of the members' meeting of the San Diego Association dated February 17, 1921:

"The Board of Directors submitted the following recommendations as to the disposition of the stores' profits for these past four months, and moved their adoption; that out of the sum of \$1,351.74 profit that \$400.00 be set apart for the payment of interest due on the members' loan

(Testimony of Charles J. Eason.)

capital; that the sum of \$47.59 be set apart as a depreciation fund for the past four months; that the sum of \$50.00 be set apart to be used as the educational fund; that \$28.47 be set apart to be used as a reserve fund; that the balance of the store profits amounting to \$825.68 be left in the stores' funds as a special loan to be prorated and credited to each member according to the amount of his or her share in the purchase profit rebate, the stores to pay said members the sum of 5% interest for the use of the same. Motion was made by Dale Smith, and the motion seconded; that the recommendations of the Board of Directors as to the disposition of the stores' profits be adopted and concurred in. Moved by Henry Read, seconded by E. F. Hastings: that this motion be amended so that any member who wishes can draw out his or her rebate on purchases, instead of leaving it in the stores as special loan, may do so. Amendment carried. The question on the original motion as amended was put and the original motion as amended carried."

The following is a copy of the form used in paying interest on Loan Capital Certificates and rebates to members of the local Association:

PACIFIC CO-OPERATIVE LEAGUE

(Signed) Ernest Ames.

San Diego Branch

When Redeemed Manager Must Forward With Daily Report.

(Over)

(Testimony of Charles J. Eason.)

The reverse side of Exhibit reads as follows:

“(1) ADDED CAPITAL

Please place to credit of loan capital
in my name.

Name

(2) REDEEMED IN CASH

Name (Signed) Stanley M. Gue.

(3) REDEEMED IN MDSE.

Name

The second sheet of aforesaid exhibit is in words
and figures as follows, to-wit:

“#58 To be Cashed at Store only.

PACIFIC CO-OPERATIVE LEAGUE.

San Francisco, Dec. 31, 1920.

To the Manager of San Diego Branch.

Pay to, or Credit W. B. Jones.....\$.17

.....Seventeen CentsDollars.

being in full payment of dividend and interest to
Dec. 31st.

.....
: 1. This can be added to members' share :
: 2. It can be taken out in trade by mem- :
: ber, or :
: 3. It can be exchanged for cash. :
: Member will strike out the line not :
: wanted and sign here in full settlement. :
: :
: (Over) :
:

(Testimony of Charles J. Eason.)

PACIFIC CO-OPERATIVE LEAGUE

(Signed) Ernest Ames

San Diego Branch

When Redeemed Manager Must Forward With
Daily Report

(Over)"

The reverse side of Exhibit reads as follows:

(1) ADDED CAPITAL

Please place to credit of loan capital in my name.

Name

(2) REDEEMED IN CASH

Name

(3) REDEEMED IN MDSE.

Name

Petitioners Exhibit 16"

An inventory of the stores was taken and afterward the gross profit figured and the expense taken out and the net profit figured. Out of the net profit was deducted such items as depreciation, interest, educational fund and one or two other items, and what was left was pro rated among the members according to purchases and rebated. At no time while I was Secretary did the local Board of Directors authorize the investment of 25% of the loan capital of the Pacific Co-Operative League Stores, San Diego Branch, in any wholesale grocery.

(Testimony of Charles J. Eason.)

The dividend slips for the dividends or rebates I spoke of came from San Francisco. I also received interest on my loan capital investment of \$40.00.

Mr. Kinard was in charge of the local stores for several months. Mr. Huggins succeeded him. Mr. Huggins was sent here by the Pacific Co-Operative League Stores, at the request of two of the Directors of the local Association. The management of the store purchased all the supplies. There was one manager for all three stores. The manager's check for his salary came from San Francisco, as well as the checks for all the other employes. I understand that all money came from San Francisco.

ON CROSS EXAMINATION.

Mr. Johnson represented to us that 25% of the loan capital was to be subscribed at such time as there would be sufficient number of stores represented to organize a wholesale store in Los Angeles and each of the local groups subscribing 25% of their stock would be sufficient to organize a wholesale at Los Angeles and we would benefit from that.

Article IV of the By-Laws of the Pacific Co-Operative League reads as follows:

Any person, firm, organization or corporation may become a member of this association by paying the membership fees of \$10.00—which shall also include a life associate membership in the Pacific Co-Operative League. Members shall also pay at least the sum of \$40.00 additional as loan capital, 25% of which shall be invested by

(Testimony of Charles J. Eason.)

the Pacific Co-Operative League, Incorporated, in an incorporated wholesale company, and the balance shall be invested in stores of this association, and by signing the By-Laws of this association.

The following is taken from the Minutes of the Members' meeting of the local Association of September 16, 1920:

"Manager Floaten gave a very interesting talk on the general business situation, stating that a total of more than \$12,000 had been taken in by the three stores during the past fourteen days. He called attention to the fact that some who wish to patronize the Co-Operative store had been drawn to another store nearby and it was suggested that a large sign should be placed to offset this error."

On October 14, 1920, the San Diego Co-Operative Association passed a resolution to the effect that the Consumers Grocery Company signs should be taken down and that they should be replaced with signs reading, "Pacific Co-Operative Stores, San Diego Branch."

On November 12, 1920, said Board of Directors passed a resolution to the effect that the signs on the stores should be made to read, "San Diego Branch Pacific Co-Operative League, Store No. 1," "Store No. 2," "Store No. 3," respectively.

The Minutes of the San Diego Co-Operative Association of December 16, 1920, show that said Associa-

(Testimony of Charles J. Eason.)

tion had come into possession of the sum of \$250.00 through a commission that was obtained from the former owner (Consumers Grocery Company), of the stores for selling the stores. Mr. Eason stated that he was Secretary-Treasurer of the local Association at that time and that said \$250.00 was never turned over to him or the Association; that so far as he knew it was paid back to Mr. Johnson.

After Organizer Johnson left, I collected from different people who were taking up loan capital subscriptions. I gathered those and forwarded them. The money was deposited in the Security Bank in the name of the Pacific Co-Operative League and was subject to check to the Pacific Co-Operative League at San Francisco. The local Association had no right to check on it.

The manager of the stores and the help were paid by the checks of the Pacific Co-Operative League.

It was reported by Mr. Ames that the insurance would be carried by the Pacific Co-Operative League and that expenses would be taken out of our store. I do not know in whose name they were insured.

I resigned as Secretary-Treasurer because of the interference of the Pacific Co-Operative League on our funds, so that I could not keep my accounts in the way they ordered these things handled. It was through San Francisco and that was one reason I resigned.

(Testimony of W. S. Neal.)

TESTIMONY OF W. S. NEAL, for petitioners.

W. S. NEAL, a witness produced on behalf of petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I met Mr. A. A. Johnson and was with him when he was soliciting subscriptions for loan capital certificates. I was working for the Pacific Mutual Life Insurance Company and was soliciting, I know many people who were interested in co-operation for public good and not for profit and I introduced Mr. Johnson to these friends of mine. He represented that he was to pay \$40.00 loan capital to be used to purchase goods to put on the shelves; he made that point strong, that we would use our own money to put goods on the shelves and receive the profits ourselves. He went on to elaborate how if we would trade with other merchants we were charged interest on investments, and that by doing this act for ourselves we were enabled to save that profit, which would be distributed among the members, he made it absolutely clear that this \$40.00 loan capital was a loan to be used for this purpose, it was to be owned and controlled and managed by our own people, he dwelt on that and made it perfectly clear and every man he solicited aside from my own case, he stated that the stores would be owned by the people who furnished the money to buy them, they would be owned by San Diego people, owned and operated. Nothing was said about 25% of the loan capital being used for the

(Testimony of Stanley M. Gue.)

purpose of establishing a wholesale grocery. Under certain circumstances we could get our money back in case we went away or anything of that kind. I never received one of the loan capital certificates. I made two payments, but did not make any more.

TESTIMONY OF STANLEY M. GUE for petitioners.

STANLEY M. GUE, a witness produced on behalf of petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I have been a resident of San Diego off and on for about fifteen years. I am a member of the San Diego Co-Operative Association. I joined it about the month of November, 1919, I signed a petition that was circulated by the Federated Trades Committee which was organizing the Co-Operative store here. I saw a little sign over one of the stores, which read as follows: "This store is owned by 550 families. Ask the clerk inside how you can become one of them." The sign was put up about one year ago and has been there ever since.

I attended a meeting in San Diego at which Mr. Ames of the Pacific Co-Operative League spoke. Mr. Ames stated that if we would affiliate with their League that they had a wholesale house in San Francisco where we could buy cheaper by affiliating with the combined society than at the local wholesale houses; that after we raised capital and got our store going

(Testimony of Stanley M. Gue.)

they intended to establish a wholesale house in Los Angeles and at that time if we desired we could vote 25% of our capital to apply in establishing the wholesale house in Los Angeles; and he told us at that time we were not incorporated, and he told us the League was incorporated and could handle all matters for us in a legal way. He told us that the League being an incorporated body they were entitled to act as Trustees of our funds and managers of our business in any way that an ordinary bank or trust company might act; and that it would not be necessary for us to go through the formality of incorporating, he told us about what they had done in other towns; that in some places the organization had raised \$25.00 per member for the capital of their store; that in some places fifty and some one hundred. He advised us that we ought to raise about \$50.00 per head for capital in our store and as soon as we had sufficient capital we should go ahead and buy up our store; and he stated that the League, in addition to having the wholesale houses, had trained managers which they could furnish to their federated society and trained auditors, bookkeepers, and efficiency experts; and that they would assess this local society a small part of the actual expense, which would be only a small part of what it would cost us to hire those experts ourselves; that we could get that benefit by affiliating with the League; that they would send an organizer and receive our loan capital and put it in escrow in the bank until we were ready to buy a store, and that they would assist us in

(Testimony of Stanley M. Gue.)

finding a locality; that they had trained men they sent around to investigate those things, and that we could get the best bargain possible in buying out a store. And he told us that they would - that they had book-keepers and by keeping a centralized account they reduced the cost of operation to a minimum, and that they assessed each local group for their share of the expense. He said that the Pacific Co-Operative League operated on the Rochdale plan. I received a loan capital certificate in the same form as that of the others who subscribed for loan capital certificates.

I was a Director of the local Association. I have had the office of Secretary and Treasurer. I was elected in October 1921. Mr. Huggins, Manager of the Pacific Co-Operative League Stores, was present at several of the meetings of the Board of Directors of the local Association.

I did not receive any dividends or interest from any other store or branch of the Pacific Co-Operative League other than the San Diego branch.

There are about 575 members on the books in my possession. They are not all fully paid up. There are about 520 or 530 fully paid, the balance have only small interests in the business, twenty or twenty-five dollars. They have not paid their full \$40.00.

I got 5% on \$40.00 invested and a rebate on my purchases, according to the amount of the profit, which were figured by our local Board of Directors and proportioned to the members according to their purchases. I got a draft of 17¢ interest from the Pacific Co-

(Testimony of Mrs. Bertha Gleason.)

Operative League payable from the San Diego account. Later I got a draft or check or memorandum for my rebate on purchases. I aided in taking inventory of the local stores once. Our local Board takes inventory every six months, in order to find profits to be paid back to the members. The Managers of the local stores usually attended the meetings of the local Association and made a report of the business, etc. While I was Secretary-Treasurer of this local Association it has never been called upon directly to pay any of the debts of the Pacific Co-Operative League at other places.

Minutes of meeting of the San Diego Association, December 15, 1921. These Minutes show that the Pacific Co-Operative League was discharged as Trustee for the local Association; that new Trustees were appointed and that name was changed from the Pacific Co-Operative League, San Diego Branch to the San Diego Co-Operative Association. Also that Mr. Huggins the Manager appointed by the League, was present.

TESTIMONY OF MRS. BERTHA GLEASON
for petitioners.

MRS. BERTHA GLEASON, a witness produced on behalf of petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I live at #546 Sixteenth Street, San Diego, California. I am a member of the San Diego Co-Opera-

(Testimony of Charles J. Mays.)

tive Association. I became a member in 1919 through the organization that was started in the Labor Temple through the Federated Trades. I paid \$60.00 I was interested in the co-operative movement, having read and studied it previous to the formation of the San Diego Co-Operative Association. I paid \$10.00 when the organization was started in the Labor Temple, and \$40.00 loan capital. Afterwards I paid \$10.00, \$5.00 a month, to buy coupons for the upholding of the organization. I was informed that we were undercapitalized and to save our business we would have to subscribe more capital. I paid the \$10.00, I am not sure whether to Mr. Berry or Mr. Barnes, one of them was acting Secretary at that time. \$10.00 was to be used for our individual store in San Diego. The money was not to go out of San Diego. When I paid my \$40.00 I understood that 25% of it was to go to the establishment of a wholesale grocery in Los Angeles. .

TESTIMONY OF CHARLES J. MAYS for petitioners.

CHARLES J. MAYS, a witness produced on behalf of petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I live at #3586 Falcon Street, San Diego. I am a member of the San Diego Co-Operative Association. I am Secretary-Treasurer. I never performed any duties as Treasurer. No dividend was declared by the local Board while I was Secretary. Dividends

(Testimony of Walter Huggins.)

were paid out of the proceeds of the local store based upon the amount of the purchases by individual members in comparison with the total purchases of members after a given period from the time the store was opened in September 1920, that it was a sort of rebate on the amount of their purchases. I do not know whether or not 25% of the loan capital was authorized to be invested in a wholesale grocery. During the time I acted as Secretary-Treasurer or Director of the local Association, the Board of Directors did not authorize the investment of 25% capital in any wholesale grocery. The same printed form was used in the payment of dividends, and interest on the Loan Capital Certificates to members. Mr. Kinard was the first manager of the stores. He was acting as Treasurer for Mr. Hammond before the purchase. He served for several months. He was succeeded by Mr. Huggins who was sent by the Pacific- Co-Operative League, and as I understand it, at the request of two Directors of the local Association.

TESTIMONY OF WALTER HUGGINS for petitioners.

WALTER HUGGINS, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I occupied the position of Manager of the Co-operative Stores in San Diego, commencing my services the last week of February, 1920. I continued until the

(Testimony of Walter Huggins.)

stores were taken charge of by the Sheriff in February, 1922. I had charge of the purchase of goods for the stores. A few were purchased in Los Angeles, nine-tenths were purchased in San Diego. All goods purchased from wholesalers were paid for by money out of the retail trade. The bills were paid by check in San Diego; the checks were drawn on funds in the San Diego Bank, on funds I placed there. It was the custom of the store to extend very little credit but we had two or three exceptions, a city account and a boat account which amounted to about \$1,000.00 per month. The local Board of Directors authorized this credit. I was employed by Mr. Ames in San Francisco. I attended all the meetings of the local Board. I was present when the By-Laws of the local Association were changed on December 15th, 1921. My salary was paid by the young lady cashier in the store. The bank account stood in my name since February 7th, 1922, when an order was made in the Superior Court of San Diego County impounding the money in my hands. Prior to that time the account was in the name of the Pacific Co-Operative League at all times and I signed the checks on instructions from San Francisco as Manager of the Pacific Co-Operative League. I furnished a Fidelity Bond as Manager of the store. The Bond was in favor of the Pacific Co-Operative League in San Francisco.

I made daily reports to the Pacific Co-Operative League in San Francisco, of the business done in the San Diego stores. I made monthly reports to the

(Testimony of Walter Huggins.)

Board of Directors of the local Association in San Diego. We did a small amount of credit business and sent monthly statements to our debtors. The statements were sent on the billheads of the Pacific Co-Operative League. I paid bills on instructions from San Francisco. Later they made a change and instructed me that all bills would be paid in San Francisco and not in San Diego, except the small daily bills. Prior to that I paid the bills by checks of the Pacific Co-Operative League signed by myself as Manager. I never received instructions with regard to payment of bills from anyone else except the San Francisco office of the Pacific Co-Operative League. The subject of my taking orders from the local board was never mentioned by the San Francisco office of the Pacific Co-operative League. The Pacific Co-operative League in San Francisco hired me and told me to come down and take charge of these stores and to make daily reports to them and make deposits in the Bank in the name of the Pacific Co-operative League, subject to my check as Manager. All bills which I received for goods purchased for the local stores on credit came to the Pacific Co-operative League. At almost every meeting of the Board of Directors of the local organization there were bills for sending notices out to members, for hall rent and for meetings of members, which they authorized me to pay. I paid them out of the funds of the store.

Most of the out of town purchases for the stores were made in Los Angeles. For a time I was the

(Testimony of Walter Huggins.)

only person who could sign checks on the bank account in San Diego, but about three months ago the Pacific Co-Operative League made a change and bills were to be paid in San Francisco. About the 7th of February, 1922, I started to deposit money and it could be drawn in San Francisco only. I forwarded the funds to San Francisco. In the first few months after I came to San Diego we sent the money regularly to San Francisco. I did not have to have the O. K. of the San Francisco office before paying local bills.

With regard to my salary, I got notice from San Francisco the 1st and 15th of each month, telling me to draw my salary. I then handed this notice to the cashier and she would pay me. The sign on the Broadway store was there before I came, and remained there.

“Petitioners Exhibit #6

“TO REDUCE THE COST OF LIVING
THIS STORE OWNED AND OPERATED BY
500 FAMILIES

Ask the Clerk how you can join them.”

The Pacific Co-operative League owes money for goods delivered to the San Diego Store, purchased during the time I was in charge of the store. Some of these debts have not been paid. I do not know about the rest. I sent most of them to San Francisco when they asked for them a couple of months ago. To my knowledge they have not been paid. I do not believe they have. I do not know if any creditors of the

(Testimony of Walter G. Gastil.)

local stores have filed claims in the Bankruptcy Court; several told me they had not, none told me that they had. My instructions to deposit the money coming from the store in the Bank in San Diego and to draw checks against it came from San Francisco, from the office of the Pacific Co-operative League. The President of the Local Board of Directors was with me when I opened the account in the Bank in San Diego. It was upon instructions from the Pacific Co-operative League in San Francisco, I believe.

TESTIMONY OF WALTER G. GASTIL for Petitioners.

WALTER G. GASTIL, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is Walter G. Gastil. I am a wholesale grocery salesman employed by the Southwestern Grocery Company. I called on Mr. Huggins under the direction of our Credit Manager, and asked him where and by whom the bills would be paid and how often. Mr. Huggins stated the bills would be paid in San Diego; that they had a bank account down here, and that he would pay the bills each week. Mr. Huggins told me that the only connection between the local stores and Pacific Co-operative League was for buying purposes.

Petitioners Exhibits - various articles appeared in the Pacific Co-operator, the official organ of the Pacific

(Testimony of Walter G. Gastil.)

Co-Operative League showing the League plan of operation. Most of these articles were written and signed by Mr. Ames, President of the Pacific Co-Operative League.

Petitioners Exhibit #14 - Pacific Co-operator March 1921, Article by Mr. Ames. "The Pacific Co-Operative League adheres to all the fundamental principles of the Rochdale system, briefly the plan of operation of the Pacific Co-operative League is as follows: In a local group, desirous of organizing a store it consults the home office of the Pacific Co-Operative League in San Francisco as to the minimum membership and capital required. Having been advised it usually obtains the assistance of a trained, salaried instructor to address meetings which assist local committees to secure the members and to raise the capital. The funds are deposited in trust with the Pacific Co-operative League and members credited. In addition to the capital subscribed, members are required to pay a \$10.00 Association membership fee. This fee is used by the home office to pay the incidental organization expenses, subscription to the official monthly organ, the Pacific Co-operator, and to help defray expenses of general education work, of dues to the International Co-Operative Alliance, etc., a federated plan of the League as distinguished by modified form of federation. Local groups are autonomous, in that the responsibility for success or failure rests squarely on them. They are not autonomous in that they are not independent of other groups but are obliged to

(Testimony of Walter G. Gastil.)

work in unity with the plans outlined by the combined groups of the Association. On the same principle, that the State of New Jersey is not autonomous political and geographical entity but an integral working part of an association of states, so a branch of the Pacific Co-Operative League is a unit in the federation of co-operative societies combined for mutual protection and progress.

Petitioners Exhibit #12, the Pacific Co-Operator, December 1920 on front cover page. "The general work of the League consists of educating co-operators when they desire organizing into stores, groups and industries, and federating them for the development of better mutual service between producer and consumer, and the other accomplishment of the International Co-Operative Commonwealth. Experienced and capable advice offered to those wishing to organize for such purpose. Secure the best advice possible for starting a new Co-operative organization.

"Pacific Co-Operator, July 1920, Page 100. "It is the general plan to deposit the funds collected for store establishment in a local bank to be held in trust by the League for the purpose for which it is subscribed."

"Pacific Co-Operators, December, 1920, Pages 192-193, "San Diego at the advice of the League spent a long time in preparing for its business career. Some may have been a little impatient with the delay but that is now forgotten and it is a long career ahead. The Board of Directors headed by President Bischoff is displaying the special business ability in the admin-

(Testimony of Walter G. Gastil.)

istration of its affairs with frequent meetings of the Board, prompt attention to business by Committees, its ample material with which to meet the members at their monthly meetings.”

Petitioners Exhibit #24, Pacific Co-Operator, February, 1920, Page 17. “Legislative. There is a warm diversity of practice about where the boundary line comes between the Directors and the Manager. I think it can be explained. In general, the Board of Directors and the members behind them, is the legislative body concerned with the general policy of the organization, ascertaining this policy and announcing it and then putting it up to the management to carry it out. The management therefore becomes the administrative body of the society.” This article was written by Mr. Ames.

Petitioners Exhibit #25. This is a letter from Templeton Johnson to the Local Association inquiring as to the repayment by said association of the money borrowed from him.

Petitioners Exhibit #21. Mr. Dobbs, Assistant to the President and General Manager of the Pacific Co-Operative League stated in a letter to the Local Association with reference to a loan of money from Templeton Johnson, that this is a matter to some extent for local judgment. “The League is not permitted to issue any notes.”

Petitioners Exhibit #21, another letter to the Local Association by Mr. Dobbs stated with reference to the

(Testimony of Walter G. Gastil.)

return of loan capital, "we understand that we cannot return loan capital without request from the Board of Directors, we will be guided by your decision in this matter."

Petitioners Exhibit #21, a letter from Mr. Dobbs to Mr. Eason as Secretary of the local Association, reads as follows:

"Mr. Charles A. Eason, Sec.

2463 F. Street,

San Diego, Calif.

Dear Sir:

I have yours of the 23rd and attached thereto bill of expenses from July 1 to August 19, including several items of stationery, etc., which I presume are for use in maintaining proper records in connection with your association.

It is a little irregular to pay these bills from this office as same should be referred to the Board for approval and then submitted to the Manager of the store who will pay same and charge to expense. However, I am inclined to overlook our regular procedure in that this bill covers an extended period of a month a half and enclose herewith check for the amount, charging same to your society.

Yours sincerely,

PACIFIC CO-OPERATIVE LEAGUE

Per H. H. Dobbs,

Assistant President"

(Testimony of Walter G. Gastil.)

Petitioners Exhibit #21, another letter from Dobbs to local association. He states that he is making a personal appeal to the Board of Directors of each of the operating groups to permit him to draw within the next six months, part of the surplus of the League's operating stores for the actual expense incurred by Mr. Ames' trip to Cleveland which will not exceed \$12.00 per store or group.

Petitioners Exhibit #21. This is a circular letter sent out by the Pacific Co-Operative League addressed "To the Firms with Whom we are Doing Business." It states that the Pacific Co-Operative League has been doing business for the past eight years, it has been operating under the co-operative law without capital stock, its capital has been raised by membership payments of which it has close to one-half million dollars.

By-Laws. "Article 9, Section 3, Operation of branches.

In order to permit the operation of branch stores by association members as provided in Article 2, Section 2, it is hereby provided that the Board of Directors may, upon request from a group of associate members, order a survey of any district selected for a branch store, to be made, decide the number of members and the capital required to operate such branch."

The By-Laws further state the method of returning loan capital. That upon dissolution of the stores the money is to be returned on a pro rata basis, also that no stores will be allowed to go into debt.

(Testimony of Walter G. Gastil.)

Minutes of meeting of the Board of Directors, San Diego Association, December 2nd, 1920.

"President Bischoff called Director Sibert to the chair, and upon taking the floor made the following motion, which was seconded by Director Rogers, that it is the sense of the Board of Directors that during the month of December, Mr. Max Gautman be continued as a tenant in the Fifth Street store, upon condition that the section of the store now occupied by him be kept in a more presentable condition than has existed during the past three months and if at the end of this period no improvement is noticed that he be notified on December 31st to vacate. Motion carried.

"Moved by Director Sibert, seconded by Director Rogers: That Director Barnes be delegated to repair and adjust the doors of the Broadway store. Motion carried.

"The Board of Directors now being in executive session the chair called for the reading of T. J. Golden's letter requesting refund of the \$25.00 paid by him on loan capital and stating that he was in need of every cent of money which he could raise; owing to his wife's continued sickness and the expense attendant upon a second surgical operation necessary to her recovery. Moved by Director Rogers, seconded by Director Sibert that the \$25.00 paid by T. J. Golden on loan capital be refunded to him and the secretary be instructed to so notify the central office. Motion carried."

(Testimony of Monott Romaine,)

TESTIMONY OF MONOTT ROMAINE for petitioners.

MONOTT ROMAINE, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I am Trustee of the local Carpenter's Union in San Diego. The San Diego Co-Operative Association asked the Carpenters' Union for a loan of money to put into the Co-Operative stores as loan capital. They asked for \$1,000.00 for one year, to draw 5% interest, and another request for a permanent loan. The request was made by Mr. Johnson, the local organizer. I was not the Trustee when he made the application. I went into office right after that. The money was paid over: \$1,000.00 was paid back, that was loaned for one year. The money was paid back in weekly installments of \$100.00 by Mr. Huggins. I believe Mr. Bischoff brought some over at times to the financial secretary himself. I believe the permanent loan was in the shape of loan capital to the Pacific Co-Operative League. Later this \$1,000.00 of loan capital was changed into stock in the Pacific Co-Operative League Stores. The Carpenters' Union has no loan capital certificates now. The Carpenters' Union loaned \$1,000 more and received what were called "Baby Bonds", in denominations of \$5.00, \$10.00 and \$20.00. This made \$2,000.00 which was turned into stock in the Pacific Co-Operative League Stores, Inc.

(Testimony of Carl O. Retsloff.)

TESTIMONY OF CARL O. RETSLOFF for petitioners.

CARL O. RETSLOFF, a witness produced on behalf of petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I am Secretary of the Wholesalers Board of Trade and Credit Men's Association of San Diego. I have in my possession some correspondence with reference to collections and credit information on the Pacific Co-Operative League. I undertook to obtain credit information with regard to the Pacific Co-Operative League at the request of San Diego creditors. Among them were the Southwestern Grocery Co., Klauber-Wangenheim Company, Simon Levi Company, Wellman Peck Company, Nason Company and Doyle Barnes Company. I communicated with Mr. Huggins and asked him to give me a financial statement. I received a letter from Mr. Huggins which reads as follows:

"Wholesaler Board of Trade and Credit Association, San Diego.

Gentlemen:

Your communication received to *fill*, and have mailed it to our office in San Francisco as we have sent all inventory matter there. Have asked them to mail information to your office.

Yours very truly,

Walter Huggins, Manager."

(Testimony of A. A. Johnson.)

My recollection is that I made a copy of Mr. Hugins' letter and sent it out with credit information. I received a reply from the Pacific Co-operative League in San Francisco.

TESTIMONY OF A. A. JOHNSON for Respondent.

A. A. JOHNSON, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is A. A. Johnson. I reside in Oakland, California. I am now an organizer of the California Water & Power Company of the State of California, acting for Walter Spreckels.

I was at one time employed by the Pacific Co-Operative League, and in the course of that employment I came to San Diego. I was there from February 7th, 1920, to September 18th, 1920 and from January 9th, 1921 to March 19th, 1921. I was an organizer for the Pacific Co-Operative League. My duties were to solicit memberships and loan capital subscriptions for the League. I occasionally addressed meetings of prospective investors of loan capital. I did not have any specific conversation with Mr. Peltcher with regard to what was to be done with the loan capital subscriptions, only as one of a group in meetings I addressed. I made general talks at meetings. I remember one in February, 1920, at the Labor Temple in San Diego. I stated at the meeting that

(Testimony of A. A. Johnson.)

loan capital subscriptions were to be invested in stores by the Pacific Co-Operative League, to be opened in San Diego for the benefit of the people there. I stated that the loan capital paid the Pacific Co-Operative League was for investment in stores in San Diego. The question as to who should own the stores was not brought up. I did not state at any time to Charles H. Peltcher that the San Diego Association would own and control the San Diego store. I told them it was my understanding of the plan that there was to be a chain of stores coming under one head and operated on the Rochdale plan; that every member got interest on the money invested in the business and got a rebate on purchases according to the amount his purchases bore to the total amount purchased by other members in the organization. I explained that the Pacific Co-Operative League had entire management of the business and the local Association had nothing to do with the business; that was a strong argument for the Co-Operative League plan, that it had a centralized plant and business management and that the business was managed by people who understood the business, and not run by local individuals who knew nothing about the operation of a grocery business.

I did not in the month of February, 1920, state to Mr. Eason that the San Diego Co-Operative Association would own and control the stores in San Diego. I had a great many conversations with Mr. Eason during the month of February.

All the money that I collected for loan capital sub-

(Testimony of A. A. Johnson.)

scriptions was deposited in the Bank in San Diego in the name of the Pacific Co-Operative League. I deposited each week. I did not state at any of these meetings where this money was to be deposited or in whose name.

I was in San Diego at the time the stores were purchased. Mr. H. A. Floaten negotiated for the purchase of the stores. Besides Mr. Floaten and myself the local Directors - Mr. Bischoff, Mr. Eason, Mr. Barnes and others - had something to do with the negotiations. I had a conversation with Mr. W. S. Neal in the Oxford Hotel, San Diego, some time during 1920, I do not know the month. I told Mr. Neal that he was joining the Pacific Co-Operative League and making the loan capital investment for use in the San Diego stores. The question as to who would own and control the San Diego stores was never raised by Mr. Neal.

I had a conversation with Mr. Stanley M. Gue between February and April, 1920

I spoke at several meetings. I explained that those subscribing for loan capital were not stockholders in the chain of stores; that there was no stock in the stores, but that they were simply loaning money for investment in the stores and would receive interest on the money and dividends according to purchases; that is to say, from the purchases they made in the stores on the basis of rebate. I kept no account of the money I raised. I only deposited it in the Bank and the deposit slip was mailed to San Francisco. I kept no

(Testimony of A. A. Johnson.)

track of it. I think I received subscriptions for approximately \$16,000.00 or less. Each week I deposited in the Securities Savings Bank in San Diego and mailed one slip to the San Francisco office, and all accounts were kept up there.

CROSS EXAMINATION

I very often made these statements in soliciting subscriptions for loan capital certificates: That the local Board of Directors would have no control of the business whatsoever.

Sometime in the month of May, 1920, Mr. Ames came down to San Diego and I took him in my Franklin and drove around town looking at possible sites for stores, and we went through the Consumers Grocery Company and other locations, and Mr. Ames said if he could find nothing better he would buy it if he could buy on the right basis. Later in July Mr. Floaten was sent here to investigate the proposition of the Consumers Grocery Company, with a view to making report. He was sent from the San Francisco office, I believe. During the month of August, I believe the 11th of August, an agreement was drawn with Mr. Hammond (owner of the Consumers Grocery Co.) and the local people here that we purchase the store subject to approval by the League. Mr. Bischoff and Mr. Eason signed the agreement. Mr. Bischoff, Mr. Barnes, Mr. Rogers and Mr. Eason were present at the time the agreement was made and en-

(Testimony of J. N. Bischoff.)

tered into. They were Directors of the Local Association.

I made a statement at the meeting at which I spoke, that a life co-operative associate membership in the Co-operative League was to be given to those who subscribed \$10.00. They were also to have the privilege of purchasing or buying through the direct order department and a year's subscription to the "Pacific Co-Operator," a magazine published by the League, and that they would become automatically members of the local Association. There was no statement that this \$10.00 went to train managers and expert men to handle the business in these stores. I told the people they would get 5% interest on their loan capital from the earnings of the stores at San Diego. The \$40.00 represented by the loan certificates was to be an indeterminate loan. It was to be returned on dissolution of the stores. I made a report on the Consumers Grocery Company to both the San Francisco office and the local representatives here. I read the By-Laws of the Pacific Co-Operative League before coming to San Diego. I was familiar with their contents.

TESTIMONY OF J. N. BISCHOFF for Respondent.

J. N. BISCHOFF, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

(Testimony of J. N. Bischoff.)

I reside in San Diego, California. I have resided there off and on since 1906. I am a Civil Engineer with the United States Navy Department. I am employed as General Foreman of Construction at the Naval Air Station at North Island, and have been so employed since 1919. I have been with the Navy Department for eighteen years. I know Mr. Ames, President and General Manager of the Pacific Co-Operative League. I also know A. A. Johnson and Mr. Hadlon. I was elected as an officer of the first Co-Operative Association which was formed in San Diego.

As a member of the Federal Employees Local No. 53, I was appointed a member of a committee to investigate the movement on foot in San Diego to form a co-operative association in the latter part of 1919 or the early part of 1920, during the time Mr. Hadlon was here and before Mr. Johnson arrived. I went down to the Labor Temple and saw Mr. Hadlon and asked him to give me such information as he had in his possession relative to the organization which was in process of formation, asking him some pointed questions relative to this organization, so that I could make a definite and intelligent report to my organization. I asked him if it was to be a group of individuals, a local organization not in any sense affiliated with any movement, or if it was to be broader in scope. Mr. Hadlon replied that it was a movement, that it was a part of the Pacific Co-Operative League, which organization had a number of branches or stores scat-

(Testimony of J. N. Bischoff.)

tered throughout the western part of the United States. Mr. Hadlon told me he was not a representative of that organization. He did not have a copy of the Constitution or By-Laws of that Association. I made a report to my organization and later attended several meetings of that organization, which was then in process of formation, in the Labor Temple. Mr. Johnson spoke at a meeting in the early part of 1920 at the Labor Temple. Mr. Peltcher was there, but I do not know whether Mr. Eason, Mr. Neal, Mr. Gue, Mrs. Gleason or Mr. Mays or Mr. Romaine were there.

Mr. Johnson said the Pacific Co-Operative League was an incorporated body, incorporated under the corporate laws of the State of California; that it had a number of branches throughout the Western part of the United States and went on to state that he was their representative and was accepting applications for membership in the Pacific Co-Operative League on the basis of \$50.00 per member, \$10.00 of which would be for a life associate membership in the League and \$40.00 for loan capital. He told us the loan was to be used by the Pacific Co-Operative League in the purchase of stores in San Diego. Probably a month later Mr. Johnson stated that in the future 25% of the loan capital would be aside for the purpose of a wholesale store to be established, presumably in Los Angeles. Mr. Johnson did not make any specific statement to me as to the ownership of the stores.

(Testimony of J. N. Bischoff.)

The money collected was deposited in the Bank to the credit of the Pacific Co-Operative League, who drew on it as necessity arose. Mr. Johnson said that this money was to be repaid to the individuals only on certain conditions, which are defined in the Constitution of the League. All subscriptions to loan capital were made as individuals.

I attended a meeting on or about the 31st of December, 1919, at which Mr. Ames spoke. Mr. Ames spoke of the co-operative movement in England, and the methods of the Pacific Co-operative League. Mr. Ames said, to the best of my recollection, that the subscriptions of the individual members were on the basis of \$10.00 for life associate membership and \$40.00 loan capital, saying that had been decided on in San Diego; that at some stores the loan amount had been less and it had been found that less than \$40.00 was not sufficient for operation of the business.

Mr. Ames made several visits to San Diego during the period of organization. He stated that the stores were to be operated from a central office, as it was termed. They would furnish the necessary managers, necessary bookkeeping systems, necessary auditors; that the accounts of the individual stores were to be kept at the central office; that the business was to be done at the central office through the local manager, and the local manager to make payments as authorized through the central office.

All the money collected in San Diego was paid to the representative of the League, Mr. A. A. Johnson,

(Testimony of J. N. Bischoff.)

and deposited in the Bank. To my knowledge, none of the money was deposited to the credit of the San Diego Co-Operative Association.

The election of the Board of Directors of the San Diego Co-Operative League was in June, 1920, I believe. Walter Barnes, Grant M. Webster, Mrs. Nora White Simpson, Rev. Bard, John S. Seibert, Charles J. Eason and myself were the members of the Board of Directors. Mr. Ames came down to San Diego the early part of 1920, around April or May, for the purpose of looking over the ground relative to establishing a store or stores in San Diego. The Board of Directors of the local organization and Mr. Johnson, a representative of the Pacific Co-Operative League, opened negotiations for the purchase of these three stores from the Consumers Grocery Company. There were present when the contract was signed, Justin H. Hammond, A. A. Johnson, Grant M. Webster, Eason, Barnes, Rogers, Mr. Kinard and myself. Mr. Kinard was at that time an employe of the Consumers Grocery Company and a part owner of that establishment. The agreement is made out in the name of the San Diego Co-Operative Association and at the bottom of it there appears a clause - "subject to the approval of the Pacific Co-Operative League." Mr. Hammond asked us if we had full power to execute the contract. Mr. Johnson and myself stated that it must have the approval of the Pacific Co-Operative League before it was of any effect. Mr. Justin Hammond asked members of the Board of Directors if they had full

(Testimony of J. N. Bischoff.)

power to execute an instrument of this kind, and the reply was made by Mr. A. A. Johnson and myself that the agreement must have the approval of the Pacific Co-Operative League before it was of any effect.

After the agreement was signed, it was forwarded to the Pacific Co-Operative League at its headquarters in San Francisco. The Pacific Co-Operative League affirmed the contract by telegram. A draft for \$1,000.00 was drawn on the Pacific Co-Operative League by myself as President of the local organization and by Mr. Eason as Secretary, and the draft was honored. After that Mr. Harry Floaten, who was the District Manager of the Pacific Co-Operative League, came down here. To my knowledge the San Diego Co-Operative Association never had the stores insured in its name; neither did the San Diego Co-Operative Association pay any taxes on these stores.

Mr. Harry Floaten was in charge of the stores. He was not employed by the Board of Directors of the San Diego Co-Operative Association, to my knowledge. The Board of Directors did not at that time nor at any other time give to Mr. Harry Floaten any orders with regard to the management of the stores. There was a discussion in the Board of Directors of the local Association while Mr. Floaten was in San Diego as to whether or not the local Board of Directors of the San Diego Association had the right to give orders to the Manager of the Store. There were present Mr. Harry Floaten, Mr. Kinard, Mr.

(Testimony of J. N. Bischoff.)

Barnes, Mr. Rogers and myself. The conversations took place in the office of the Market Street store about October, 1920. There was a discussion as to whether or not the local Board had any jurisdiction over the store. The question was brought up by Mr. Barnes. Mr. Barnes asked if there were to be any directions given to the management of the store by the Board. I made the statement at that time that he looked at it from this angle, when he went on the job as boss, he expected to have the authority to hire and fire any men employed on that job, and I was willing to give the same right to any Manager employed for the purpose of operating these stores. The question was not raised as to whether the authority over Mr. Floaten came from San Francisco or the Local Board. Mr. Floaten was here two or three months. Mr. Floaten said that the Local Board of Directors had no authority. Mr. F. S. Kinard became Manager after Mr. Floaten. Neither the Local Board of Directors nor any member thereof, nor any official or officers of the San Diego Association had the right to check against the funds of the Pacific Co-Operative League or the Pacific Co-Operative League, San Diego Branch.

The only time that the Local Board of Directors gave any instructions to the Local Manager to pay any bills was once when they directed him to pay for painting signs on the front of the three stores. The Board authorized the payment of some minor bills for the holding of educational meetings and social enter-

(Testimony of Walter Barnes.)

tainments. The Pacific Co-Operative League, San Diego Branch, had approximately 530 members, not all of them were fully paid up. About July, 1921, I received information as to the formation of the Pacific Co-Operative League Stores, a corporation. The plan was to convert the loan capital certificates into stock in the Pacific Co-Operative Stores, Inc. The Pacific Co-Operative League sold the stores to the Pacific Co-Operative League Stores, Inc. To my knowledge 275 members of the San Diego Co-Operative Association, or Pacific Co-Operative League, San Diego Branch, converted their loan capital certificates into stock in the Pacific Co-Operative League Stores, Inc. Most of them received certificates of stock. The loan capital was to be used by the Pacific Co-Operative League for organizing a store or stores in San Diego. I do not know how much money was raised on the loan capital certificates.

TESTIMONY OF WALTER BARNES for Respondent.

WALTER BARNES, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I am a carpenter and reside in San Diego. I was temporary Secretary of the San Diego Consumers Association. I was also on the Board of Directors of the San Diego Co-Operative League. There were apparently four different names-the San Diego Co-

(Testimony of Walter Barnes.)

Operative Consumers Association, the San Diego Co-Operative League, the Pacific Co-Operative League-San Diego Branch, and the San Diego Co-Operative Association, and I was a member of the Board of Directors of all of the organizations excepting the first temporary organization.

I know Mr. Hadlon, Mr. Johnson and Mr. Ames. I was present at a meeting at which Mr. Hadlon spoke. I do not remember the date, but in the fall of 1919. He talked in a general way about the benefits to be derived from organizing a co-operative store. He brought out the fact that the object of the Pacific Co-Operative League was that \$10.00 was to be set aside for membership in the League and \$40.00 was for loan capital. I think Mr. Hadlon did not make any statement so far as the ownership of the stores was concerned. Mr. Hadlon stated that he was here in the capacity, I think of an educational or advisory or propaganda capacity, and if later on we so desired, a representative would be sent; that he was not here as District Manager or Organizer; that later a man would come down for that particular work. Later on Mr. Johnson came. He talked at a meeting in the Labor Temple; I do not know whether Mr. Neal or Mrs. Gleason were there. Mr. Johnson said the loan capital was to be handled by the Pacific Co-Operative League in the purchase of stores in San Diego. The money was to be deposited in the Bank to the credit of the Pacific Co-Operative League and they were to use it to open stores in San Diego. I did not hear

(Testimony of Walter Barnes.)

Mr. Johnson make any statement to the effect that the stores would be owned and controlled by the persons who subscribed the loan capital.

I heard Mr. Ames speak in San Diego. I never heard him make a statement that the stores in San Diego would be owned by the people who subscribed the loan capital certificates. He stated that the procedure would be that the money would be loaned to the Pacific Co-Operative League, the \$40.00 at the rate of 5%, I believe that was the rate he said, and I am judging this from what we had been discussing. Before the \$50.00 was decided upon, we had been talking about a branch, but he said it would be prorated, and \$10.00 would be for a life membership and the balance for loan capital in the League for the purpose of purchasing stores at various places, and the same plan would be adopted here in case the group decided to affiliate. He stated the Manager would be furnished under bond and every clerk hired under bond and paid by the League.

I was present when the contract for the purchase of the stores was signed by the President and Secretary. I did not sign it myself. A discussion came up at that time by Mr. Hammond, or Mr. Johnson or Mr. Kinard, or some of the three. Mr. Hammond wanted to know if the local Board of Directors had authority to conduct negotiations and stated it would have to go through proper channels so far as the League was concerned; that it would have to go before the League in San Francisco. I did not have any-

(Testimony of Walter Barnes.)

thing to do with the purchase of the property after that.

I acted on the Board of Directors. After the agreement to purchase was signed the Board of Directors had a discussion with Mr. Hammond with reference to price and cash payment. I think Mr. Hammond himself said that a certain stipulated payment should be made and the balance out of the proceeds of the first sales. The Board of Directors did not have anything to do with the purchase, to my knowledge, after Mr. Floaten came down here. The Board of Directors did not give any instructions or directions with regard to management of the stores. They did not pay the Manager's salary; he was not bonded to them; the property was not insured in the name of the San Diego Co-Operative Association; the San Diego Co-Operative Association did not hire any of the clerks. Mr. Hadlon and Mr. Johnson both stated if the money was loaned, it would be drawing 5% interest,-

CROSS EXAMINATION

Mr. Barnes stated that he never heard Mr. Johnson state when he addressed the meeting at the Labor Temple, that the Pacific Co-Operative League would own the stores after they were purchased with money subscribed by San Diego residents. He also said that he did not hear Mr. Ames state that the Pacific Co-Operative League would own the store purchased with the money subscribed by San Diego people, when he addressed the meeting referred to in Mr. Barnes

(Testimony of John S. Seibert.)

testimony on direct examination. I understood that a wholesale grocery was to be organized, but that it was not already in existence.

The Board of Directors met about every week in 1920, with possibly an extra meeting in between. The membership met about once a month. Later on we changed it to every two weeks.

TESTIMONY OF JOHN S. SEIBERT for Respondent.

JOHN S. SEIBERT, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is John S. Seibert. I am an architect and civil engineer. I have resided in San Diego for eleven or twelve years.

I know Mr. Hadlon, Mr. A. A. Johnson and Mr. Ames. I was present at meetings in December, 1919, at the Labor Temple. I do not remember who was there - I think Mr. Barnes and Mrs. Gleason were there. Mr. Hadlon stated that the movement was on foot to open co-operative stores in San Diego, the membership fee in which, or rather the fee to be paid to entitle one to membership, was \$50.00, \$10.00 of which would be a life associate membership with the Pacific Co-Operative League, and the remaining \$40.00, a certain percentage, I believe 25%, was to be set aside for establishing a wholesale store, and the balance to be used under the guidance of the Pacific

(Testimony of John S. Seibert.)

Co-Operative League to open a store in San Diego. He pointed out that 5% interest was to be paid on the \$40.00, and that whatever savings were made in the course of a year or six months, as might be agreed upon, would be returned in the form of rebate to the individual members.

Mr. Hadlon did not state that the stores to be opened in San Diego would be owned or controlled by the people who subscribed the loan capital. He pointed out the fact that the Pacific Co-Operative League owned and operated stores along the Pacific Coast and had been in business since 1913, and had never had a failure.

Mr. Johnson spoke at several meetings. He stated he was now ready to receive subscriptions for loan capital, as loan capital stock to the Pacific Co-Operative League; that he had been sent to San Diego as Organizer and that money so contributed or loaned would be used to open a store in San Diego under the supervision of the Pacific Co-Operative League. He told us that the Manager was to be appointed and would be in the employ of the Pacific Co-Operative League, a skilled man in that particular business, who would have to make a daily report to the Home Office, and that if at any time his report showed that the business was not on a paying basis, it would be the policy of the Pacific Co-Operative League to close that particular store. We were to receive 5% on the loan capital, and \$10.00 would be associate life membership, and that withdrawal of the loan capital

(Testimony of John S. Seibert.)

could be had only from a reserve fund if there was one, of the local association, upon the approval of the Board of Directors of the central board. He said a certain amount would be set aside for the establishment of a wholesale store. Mr. Johnson did not state in my presence, that the stores would be owned or controlled by the subscribers to loan capital.

I was one of the Directors of the San Diego Branch of the Pacific Co-Operative League. I went on after the deal for the purchase of the stores was made. I had nothing to do with the deal for the purchase of the stores. The Board of Directors of the Local Association did not employ nor pay the Manager. They did not insure the property. They did not pay any taxes. They exercised only an advisory control over the Manager. By that, I mean we advised with him when he made reports as to the policy, such as advertising, painting of store front and of the store itself. We did not employ any of the help in the store, nor have anything to do with the business of selling goods in the store. We did not have a right to check against the account. The bank account was not in our name. The Manager of the store made monthly reports to the Local Board of Directors. While I was director, one dividend or rebate was paid on purchases. The Local Board took the report issued by the Manager and divided the amount that was left after all expenses had been paid, or the profits, and divided it into three equal parts, as I remember- -educational, reserve fund and rebate. Out of

(Testimony of John S. Seibert.)

this rebate fund we estimated or figured out how much each persons return would be in accordance with the amount of purchases he or she had made, and a certain percentage on purchases, 4% as I remember it. This was out of the profits of the first four months from the San Diego stores. The list was prepared and sent to the San Francisco office without recommendation that it be paid. We got the figures from the Local Manager.

CROSS EXAMINATION

Mr. Johnson did not state that the Pacific Co-Operative League would own stores purchased with money subscribed by the San Diego people. I do not remember his using the word "own" at all in that connection. He said control. I attended a meeting addressed by Mr. Ames. I do not remember his stating that the stores would be owned by the Pacific Co-Operative League. Mr. Johnson stated that the benefits to be derived by joining the Pacific Co-Operative League were that it would bring the producer and consumer closer together and reduce the cost of living; that they would furnish expert Managers for the store; that they would audit the books of the store. He stated that the funds were supposed to be kept in the hands of the Pacific Co-Operative League; that the receipts of the store were supposed to be sent to the San Francisco office and the bills of the store to be paid up there through the Pacific Co-Operative League. I never heard him use the word "Trustee" He stated that they would operate the stores for the benefit of

(Testimony of H. C. Israel.)

the subscribers. The Manager made monthly reports to the Local Board of Directors. As one of the Directors of the local association I took part in determining the amount of dividend that was paid to the members.

TESTIMONY OF H. C. ISRAEL for Respondent.

H. C. ISRAEL, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I discussed with Mr. Johnson who would control the local store. He told me it would be controlled by the Pacific Co-Operative League. I am a subscriber to loan capital certificates, I was present at two or three meetings addressed by Mr. Johnson. Mr. Johnson did not say what was to be done with loan capital at any of the meetings. I was with Mr. Johnson on two or three evenings getting new members. I live at Coronado and am well acquainted over there.

CROSS EXAMINATION

I subscribed my loan capital prior to the representations of Mr. Johnson with reference to ownership, after my conversation with Mr. Johnson in regard to ownership, I interviewed prospective members. I stated very definitely to these prospects that the stores would be owned and operated by the Pacific Co-Operative League. I cannot recall all of the persons that I interviewed. I interviewed one man, a Mr. Sexton in San Diego, I do not know his initials.

(Testimony of Nora White Simpson.)

He lives on E Street between 7th and 8th in Coronado. I cannot recall any other prospects that I interviewed, by name right now. I do not think I know Mrs. H. A. Swan in Coronado. I am not acquainted with Thomas C. Young in Coronado. The name of R. A. Schultz is familiar, but I do not recall the initials. I do not know of a single person that I interviewed who later became a member of the association.

TESTIMONY OF NORA WHITE SIMPSON for Respondent.

NORA WHITE SIMPSON, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is Nora White Simpson. I am a subscriber of one of the loan capital certificates of the Pacific Co-Operative League. I know Mr. Hadlon and Mr. A. A. Johnson and Mr. Ames. I was elected on the Board of Directors of the San Diego Co-Operative Association in June 1920.

I attended a meeting one evening at the Labor Temple at which Mr. Johnson was present. I think he came in late. He spoke on this League proposition. I really do not remember just what he said. I attended a meeting at which Mr. Ames spoke, in the theatre in the east part of town but I got in late and the room was full and I had to take a rear seat and was not able to hear definitely all that was said.

(Testimony of Nora White Simpson.)

Almost immediately after I became a Director I went north with my family on an automobile trip and was gone a number of weeks, and I had really supposed that my election as an officer had lapsed because of that absence, but was afterward called I think by Mr. Johnson and reminded that I should be present at the meeting of the Board of Directors. The stores had been purchased during my absence. Mr. Floaten was the first Manager, after that Mr. Kinard and after that Mr. Huggins. The Board of Directors did not, to my knowledge, assume any control over the Manager of the store. There was a discussion about this matter in the Board of Directors, I am unable to state the date or what particular meeting, - I think it was early in my career as a Director. I cannot state definitely who was present. I do not remember who made the suggestion that the Board should have control over the Manager. I only remember that it was discussed, and the final conclusion was that the Board of Directors had no control over the Manager at all. The Board of Directors did not, to my knowledge, take any part in buying of merchandise or hire of help or of Manager, or paying of Manager or in the payment of taxes, or of insurance. The Manager made reports to the Local Board of Directors of the financial condition of the business. I was present at all the meetings of the Board of Directors except one.

(Testimony of H. A. Floaten.)

TESTIMONY OF H. A. FLOATEN for Respondent.

H. A. FLOATEN, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is H. A. Floaten. I was employed by the Pacific Co-Operative League from the fall of 1919 up to July, 1921. My residence is #138 North Ardmore Avenuc, Los Angeles. While employed by the Pacific Co-Operative League I was store supervisor. My duties were to start the stores when a sufficient amount of money had been raised. I was sent in to close the deal, or start the store from the beginning and see that it was running under the plan of the League—to start from the beginning, laying a foundation.

I made a visit to San Diego about the middle of July, 1920, under instructions from Mr. Ames, General Manager of the Pacific Co-Operative League. My salary was paid from the San Francisco office.

When I came to San Diego Mr. A. A. Johnson, Mr. Barnes, Mr. Bischoff and myself called on Mr. Hammond, who was running the Consumers Grocery, a corporation, and talked to him about buying his business. He showed me the stores, how situated, the amount of business he was doing, like anyone would in regular business affairs, just like a buyer and seller would do to each other. I reported to the

(Testimony of H. A. Floaten.)

Pacific Co-Operative League in San Francisco and then I went away.

I came back in August, 1920, on instructions from the Pacific Co-Operative League in San Francisco. I was told that Mr. Hammond had signified his intention to sell out and had made some agreement here with parties on the ground, and to go ahead and consummate the deal. We took an inventory and paid him a draft. The inventory was between \$21,000.00 and \$22,000.00. I had a conversation with Mr. Hammond in regard to the recordation of notice of sale. Notice of Sale was prepared by Mr. Hammond's attorney and recorded. The Notice of Sale read from him to the Pacific Co-Operative League. I drew a draft for \$12,000.00 on the Pacific Co-Operative League in San Francisco in favor of the Consumers Grocery Company. That draft was paid by the Pacific Co-Operative League. The draft was offered in evidence as Respondent's Exhibit "9", and a copy of same is inserted herein:

"PACIFIC CO-OPERATIVE LEAGUE, INC.

X00562 No. 8551

236 Commercial St., San Francisco,

Sept. 1, 1920.

PAY TO THE ORDER OF Consumers Grocery
Company,

Twelve Thousand Dollars (\$12,000.00)

Being Part Payment And Charge to Account of
on Stock of Mer- San Diego Co-Operative Stores

(Testimony of H. A. Floaten.)

chandise and Fix-

Signed H. A. Floaten

tures at 426 Market St.,

618 5th St., and

1033 Broadway.

”

The balance of the purchase price was paid by taking the daily receipts. The total purchase price was \$21,616.38. \$5,476.36 was paid out of the proceeds of the store; that left a balance of \$3,140.02. That was paid by draft drawn on the Pacific Co-Operative League in San Francisco, which draft was paid. The draft was introduced in evidence as Respondent's Exhibit "10", and is herein inserted:

“PACIFIC CO-OPERATIVE LEAGUE, INC.

No. 8557.

236 Commercial St., San Francisco.

Sept. 11, 1920.

PAY TO THE ORDER OF Consumers Groc.
Company Thirty One Hundred Forty & 02/100
Dollars (\$3140.02)

Being AND CHARGE TO ACCOUNT OF
payment for San Diego Branch,

Settlement in full Signed H. A. Floaten, Mgr.”

Subject to any

Minor adjustment.

A Bill of Sale was received from the Consumers Grocery Company in favor of the Pacific Co-Operative League. Said Bill of Sale is Respondent's Exhibit "3", and is herein reproduced:

(Testimony of H. A. Floaten.)

“KNOW ALL MEN BY THESE PRESENTS:

That CONSUMERS GROCERY CO. (Inc.)
426 Market St., the parties of the first part, for
and in consideration of the sum of TEN DOL-
LARS.....of the United States of America,
to us in hand paid by THE PACIFIC CO-
OPERATIVE LEAGUE (Inc.), the parties of
the second part, the receipt whereof is hereby
acknowledged, does by these presents grant, bar-
gain, sell and convey, unto the said parties of the
second part, its executors, administrators and
assigns, One Ford Delivery car, and the furni-
ture and fixtures and grocery stock located in
stores at

426 Market St.

620 Fifth St.

1033 Broadway.

(This Bill of Sale void in case of failure of The
Pacific Co-Operative League to pay draft drawn
on San Francisco this date).

TO HAVE AND TO HOLD the same to the
said parties of the second part, its executors,
administrators and assigns forever. And they
do for their heirs, executors, and administrators,
covenant and agree to and with the said parties
of the second part, its executors, administrators
and assigns, to warrant and defend the sale of
said property, goods and chattels, hereby made
unto the said parties of the second part, its
executors, administrators and assigns, against all

(Testimony of H. A. Floaten.)

and every person or persons whomsoever, lawfully claiming or to claim the same.

WITNESS our hands and seal this 11th day of Sept. 1920.

CONSUMERS GROCERY CO.,
426 Market Street,
Justin Hammond, Pres.

(Reverse Side)

BILL OF SALE.

Consumers Groc. Co. to Pacific Co-Operative
League.

Dated Sept. 11th, 1920."

Each of us had an equal number to assist in taking inventory at the time the sale was made. Some of the persons representing us were Mr. Eason, Mr. Barnes and Mr. Bischoff. I can't name all of them but we had ten or eleven and Mr. Hammond furnished an equal number from his employees to represent him.

\$2,000.00 was borrowed from a man by the name of Johnson to help pay the price of the store. The money was deposited in the bank in the name of the Pacific Co-Operative League, by Mr. Kinard, the store Manager. I made arrangements for the note with Mr. A. A. Johnson. After the purchase of the stores, I remained in charge for two months at least. I reported to the Pacific Co-Operative League in San Francisco daily. I deposited the money to the account of the Pacific Co-Operative League. It was subject only to the checks of the officers of the Pacific Co-Operative League in San Francisco. It was not subject to the check of anybody in San Diego.

(Testimony of H. A. Floaten.)

When I left in October, 1920, Mr. Kinard remained in charge of the store. I employed Mr. Kinard to start them. He was paid his salary by the Pacific Co-Operative League. Mr. Ames came down from San Francisco and confirmed my appointment of Mr. Kinard as Manager. The local Board had nothing to do with the employment of Mr. Kinard. They were not consulted. I had no conversations with the local Board with regard to the deposit of money or in whose name it was to be deposited. Some of them knew where it was deposited and in whose name.

From October, 1919, to July, 1921, I opened stores for the Pacific Co-Operative League at Tucson, Orcutt, Maricopa, Taft, McKittrick, Bizbee and Douglas, Arizona, San Diego, and Las Vegas, Nevada. The procedure in San Diego was the same as in all the other cases. All the money was deposited in the name of the Pacific Co-Operative League.

Q. You may state, Mr. Floaten, whether or not you became a creditor on the faith that the Pacific Co-Operative League was the owners of all these stores, including the three stores in San Diego?

MR. HERTEL: Objected to as calling for conclusion of witness.

MASTER: Objection sustained.

MR. BAILIE: I will ask that the witness answer the question.

MASTER: He can answer it, but it is disregarded as far as I am concerned. The record can show it.

A. Well, yes.

(Testimony of H. A. Floaten.)

(No ruling on this was made by District Court).

Part of my claims against the Pacific Co-Operative League was incurred after the purchase of the San Diego stores.

CROSS EXAMINATION

My claim is in the neighborhood of \$4,000.00 for money loaned to the Pacific Co-Operative League. The money was loaned to use in its merchandising business. The first loan was made while I was in Tucson establishing a store in 1919. At that time I advanced \$2,000.00. The next money I loaned was between March and June, 1921. The money was loaned to the Pacific Co-Operative League. I have a note of the Pacific Co-Operative League as security. I made the money myself that I loaned to the League. I received a salary of \$150.00 per month from the League. I was not paid regularly. I do not have an independent income.

Q. Where did you get this money to loan to the League?

A. I made it myself.

Q. Off the stores you opened?

A. I made it out of the stores I opened.

Q. Did you?

A. Did I? How could I make it out of the stores I opened?

I know that the money collected from the loan capital subscription was not sufficient to buy the business.

(Testimony of H. A. Floaten.)

By-Laws Pacific Co-Operative League, Section 4,
Article 9,

“Each local branch upon being admitted into the Pacific Co-Operative League shall transfer to the League the funds collected as loan capital for the establishment of its store, for which there shall be immediately issued membership Loan Capital Certificates. The central Board of Directors of the Pacific Co-Operative League which then proceeds to institute the store and shall provide equipment and stock for the same with the funds as above provided, etc.”

The Pacific Co-Operative League opened stores when the demand came for stores. Sometimes there was sufficient money and sometimes not. That did not stop us from opening the stores. I was present at the time the Notice of Sale was discussed. There was just Mr. Hammond and myself. Mr. Hammond and I were present when the Bill of Sale was given. The San Francisco office kept a record of all money that was paid in by local subscribers and the drafts drawn in payment of the stores were charged against that money. Every store had its own account in the Accounting Department. At the time the Notice of Sale and the Bill of Sale was executed, no one was present but Mr. Hammond and myself.

I am familiar with a Branch of the Pacific Co-Operative League that was organized at Atascadero, California. I helped organize it. The Pacific Co-Operative League operated the Atascadero stores They

(Testimony of H. H. Dobbs.)

do not still operate. It is still in operation. They are not operated by the bankrupt estate or estate in bankruptcy, so far as I know.

The small sign on the Broadway store reading "This store is owned by 500 families, etc." was ordered and contemplated before I left San Diego when the store was started. I think it was put on by Mr. Johnson. He had the sign made and put on. There was a Labor Parade going and he wanted to advertise. The sign was ordered with my knowledge.

TESTIMONY OF H. H. DOBBS for Respondent.

H. H. Dobbs, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is H. H. Dobbs. I reside in San Francisco. I have resided in San Francisco for two years.

On May 15th, 1920, I became assistant to the President and General Manager of the Pacific Co-Operative League. My duties consisted of management of the office, organizing departments and the field force, and all matters in the absence of the General Manager. I was his representative. I was in charge of the accounting and bookkeeping department.

I visited San Diego in May, 1920, in company with Mr. Ames, Mr. Sessions and Mr. Brunaker. Mr. Ames was President of the League, Mr. Sessions was Assistant Auditor of the League and Mr. Brubaker was Field Supervisor of the League.

(Testimony of H. H. Dobbs.)

I am familiar with the fact that certain moneys came into the possession of the Pacific Co-Operative League as the result of the payment of loan capital subscriptions from the people in San Diego. Mr. A. A. Johnson was doing the organizing work, soliciting memberships and receiving payments on same. He made a semi-monthly transmission report, showing on such report the name of the party subscribing, the amount subscribed, dividing the membership fee from the loan capital subscription and showing the actual payment with its initial receipt, together with evidence of the money collected or received by him having been deposited in the bank or sent to the San Francisco office. This mail was delivered either to my desk or Mr. Ames' desk. A copy of the transmission report was retained by me and the other sent with evidence of the remittance to the cashier and auditor, who approved the sheet, initialed it and turned it over to the register. The register checked the receipts of secondary payments against the transmission reports and then entered on what is termed by us a membership envelope the man's name, address and associate number as member of the Pacific Co-Operative League, entering in addition the number of the receipt issued, date of issue and the amount paid. From that he posted the amount into the loan capital ledger, and that was the process of our records.

On the control account of the Pacific Co-Operative League, the Pacific Co-Operative League is charged with the amount and the loan capital stock ledger is

(Testimony of H. H. Dobbs.)

credited with that as capital. Each group had its accounts segregated and its stock ledger for convenience and identification in posting. The money was all deposited and merged in one bank account. The loan capital money was divided, 75% being loan capital and 25% for wholesale purposes. We received money from the sale of merchandise through the various stores, through the direct order department, and some from purchasers who purchased from the Pacific Co-Operative League merchandise they obtained from us. The money from all these different sources went into the one bank account. We borrowed money at various times, and that money was put in the same bank account with all the other money. All the book accounts were kept in San Francisco, 236 Commercial Street. The corporation books were kept there and all books of all the stores were kept in the same place.

On September 1st, 1920, the total subscriptions to loan capital in San Diego were \$22,070.00. Of this amount \$13,975.00 was paid in cash, \$3,493.75 was set aside for the wholesale account, and \$10,481.25 was set aside in the capital account. There was a loan of \$2,000.00. Including the loan and the capital, there was \$11,981.25 available for the purchase of stores at the time they were purchased. The purchase price of the stores was \$21,616.38. This purchase price came from San Diego subscriptions, from the specific loan, from loans made by the Pacific Co-Operative League for the time being and from sales for the first few days of the month of September. After

(Testimony of H. H. Dobbs.)

all available cash had been exhausted, the balance of the purchase price of the stores came from the general fund of the League. The money to make up the deficit came from all the sources from which the Pacific Co-Operative League could get money. Reports were made to the San Francisco office by the Managers of the stores. Daily reports were sent in. The Managers of the stores at San Diego were employed by the Pacific Co-Operative League. They were bonded to the Pacific Co-Operative League; their authority came from the central office at San Francisco. They were instructed not to take orders from the local Board of Directors. When the stores were taken over, the insurance was changed on them to the Pacific Co-Operative League. The policies of insurance bearing the following endorsement:

"Assignment of policy (actual sale and transfer of property). The ownership of the property insured in the attached policy No. 120289 of the Old Colony Insurance Company having actually passed to Pacific Co-Operative League for value received, we hereby transfer and assign unto it all our title and interest in this policy. This assignment is subject to all the terms and conditions therein mentioned and referred to. WITNESS OUR HANDS AND SEALS this 11th day of September, 1920.

Witness: Gilman A. Gist.

Consumers Grocery Co., Inc.,
F. S. Kinard, Sec. & Treas.

(Testimony of H. H. Dobbs.)

Consent to Assignment

The ownership of the property insured in the attached Policy No. 120289 of the Old Colony Insurance Company having actually passed to Pacific Co-Operative League, the said Insurance Company hereby consents that the interest of Consumers Grocery Co., Inc., in the said Policy be assigned to Pacific Co-Operative League. This consent being subject to all the terms and conditions therein mentioned and referred to, and being granted upon the especial condition that the said assignee shall be responsible and liable to said Company for all premiums now due, or which may hereinafter become due on said policy. This consent is granted upon the further condition that the same shall only be valid and binding while actually attached to said policy.

Attached to Policy No. 120189 of the Old Colony Insurance Company, issued to Consumers Grocery Co., Inc., Agency at San Diego, Cal.

Dated, September 11, 1920.

Gilman A. Gist, Agent."

(Respondent's Exhibit "16")

The Pacific Co-Operative League carried compensation insurance on the employes in San Diego in its name. The manager was bonded to the Pacific Co-Operative League. The interest on the loan capital subscription was charged to the general interest account.

(Testimony of H. H. Dobbs.)

The term rebate or dividend as used by the Pacific Co-Operative League, is an amount of profit made from the sale of merchandise in the store for a given period of time. The determining of that dividend is by obtaining the actual profits made in the business for that given period of time as well as the sales to each individual member. They are totalled, ratioed and paid on that basis.

The Pacific Co-Operative League has paid the taxes on the San Diego stores since they were purchased. The money to pay interest on the loan capital certificates was paid out of the general profits of the business and not out of profits of the local group.

CROSS EXAMINATION

The 25% referred to as set aside for wholesale purposes did not refer to an established wholesale corporation. It was to be used by the League for wholesale operations. The Pacific Co-Operative League never borrowed any money specifically for the San Diego stores. I did not have anything to do with the loan made by Mr. Templeton Johnson. I was acting in my official capacity at that time. The 25% of the loan capital set aside on the books for wholesale purposes could be used for the purchase of stores. It could be used for the purchase of the San Diego store.

Petitioners Exhibit #21, a letter written to the San Diego Association and signed by Mr. Dobbs:

“Our records show here that you have approximately 400 members from which \$6,500.00

(Testimony of E. O. F. Ames.)

in loan capital has been paid in. This is of course approximate, too. \$750.00 of this has been used as wholesale capital, but this is available for the purpose of purchasing or the establishing of a store for San Diego."

The expenses of a local group of stores were never, as a matter of bookkeeping, charged on the books to any other group. We had a stock ledger. We called it stock, it was really loan capital. I did not notify the people that a 25% and 75% division was made. It was only a matter of expedition in accounting. It was not a custom to declare any rebate or dividend to these people on profits in other places. They were declared on the earnings of each unit.

TESTIMONY OF E. O. F. AMES, for Respondent.

E. O. F. AMES, a witness produced on behalf of Respondent, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

I reside in San Francisco. I am President of the Pacific Co-Operative League and have been from December, 1919 to the present time. The Pacific Co-Operative League is now in bankruptcy.

I was present at a meeting in the theatre in the City of San Diego in the spring of 1920. I did not state at that time that any stores which would be opened in San Diego would be owned or controlled by the loan capital subscribers of San Diego.

(Testimony of J. R. Dennison.)

I made a second visit to San Diego in October 1920. At that time I met the Board of Directors of the San Diego Branch of the Pacific Co-Operative League, which was the local Association. We met in the office of the store. There were present besides myself Mr. Bischoff, Mrs. Simpson, Mr. Eason and there were others there, but I cannot remember their names. I believe only one of the full Board was absent. There were seven on the Board. At that time I told the Board of Directors of the Local Association that they had no part and should take no part in the operation of the business, and that they should not in any way get between the Home Office and the Manager. The date of the last meeting was October 27th, 28th or 29th, 1920. At one of these meetings I made it clear that the stores were to belong to the Pacific Co-Operative League. I told them the stores, when established, would be a branch of the Pacific Co-Operative League, owned and operated by the Pacific Co-Operative League. I told this to the local people both in public address and in private.

REBUTTAL TESTIMONY OF J. R. DENNISON.

J. R. DENNISON, a witness produced on behalf of Petitioners, being first duly cautioned and solemnly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

My name is J. R. Dennison. I was present at meetings in San Diego addressed by Mr. Ames. One of them was in a theatre. At this meeting Mr.

(Testimony of Charles J. Eason.)

Ames did not state that after the organization of the local Association and the purchase of the stores they would be owned and operated by the Pacific Co-Operative League.

REBUTTAL TESTIMONY OF CHARLES J. EASON, on behalf of Petitioners:

I was present at a meeting of the Board of Directors of the San Diego Co-Operative Association on the 27th, 28th or 29th of October, 1920, at which Mr. Ames was present.

There was no formal meeting of the Board of Directors. Mr. Ames on that date met with some of the Directors. Mr. Ames at that meeting did not state in my hearing that the Board of Directors could not interfere in the control and management of the business—could not stand between the Pacific Co-Operative League and the local Manager or interfere in any way. At the time of this meeting referred to, when Mr. Ames met the Board of Directors, I was not in agreement with the other members of the Board of Directors, particularly in regard to the control and operation of the store and the handling of the finances of the Association. The difficulty between me and the Pacific Co-Operative League was that I believed the Local Association should have some account of the finances of the members of the Association. The contention of Mr. Ames was that the money collected should be turned in to the local store and transmitted to the Pacific Co-Operative

(Testimony of A. A. Johnson.)

League through the local stores. He was quite insistent on that, and as a result of the meeting, I resigned. I signed a note for the loan made by Templeton Johnson as Secretary of the San Diego Branch of the Pacific Co-Operative League.

Upon cross-examination Mr. Eason stated: I do not know of any endorsement or guarantee to the note made by the Pacific Co-Operative League.

REBUTTAL TESTIMONY OF A. A. JOHNSON,
on behalf of Respondent:

With regard to a certain note for \$2,000.00 for money loaned by Mr. Templeton Johnson, I went to Mr. Johnson and told him we were short. The business office needed money in buying the store and we would have to have more money to close the deal with the Consumers Grocery Company, and we would have to have it right away, and Mr. Johnson agreed to let us have \$2,000.00 for, I believe, three months, so I drew up a note which was signed by Mr. Eason and took it to Mr. Johnson from the Local Association and he said he could not recognize it that way; that he would not accept it that way. If the League would sign the note he would accept it. I told him that we had to have the money right away and could not wait for the endorsement, as Mr. Hammond needed the money at once to close the deal. So he let me have check for the money with the understanding that I would return the note immediately to him when endorsed from San Francisco, and it was endorsed, came

back to me and I took it to Mr. Johnson. It was endorsed by the Pacific Co-Operative League.

STIPULATION OF FACTS.

The Pacific Co-Operative League Stores was adjudicated a bankrupt on the 22nd day of February, 1922, and the Pacific Co-Operative League was adjudicated a bankrupt on or about March 15th, 1922. Both of these are corporations organized under the laws of the State of California.

In 1921 Mr. Huggins, who was Manager of the Three San Diego Stores, turned in a tax statement in the name of the Pacific Co-Operative League, which shows—

Store No. 1, 426 Market St., San Diego.

| | |
|-------------------|----------|
| Auto | \$100.00 |
| Fixtures | 250.00 |
| Merchandise | 1365.00 |

Total\$1715.00

Taxes paid, \$65.68

Store No. 2, 618 Fifth St., San Diego.

| | |
|-------------------|-----------|
| Fixtures | \$ 300.00 |
| Merchandise | 1445.00 |

Total\$1745.00

Taxes paid, \$66.83.

Store No. 3, 11th & Broadway, San Diego.

| | |
|-------------------|-----------|
| Fixtures | \$ 350.00 |
| Merchandise | 1365.00 |

Total\$1715.00

Taxes paid, \$65.18

It was stipulated that at all times the officers of the Pacific Co-Operative League had a right to check against the bank account in San Diego of the Pacific Co-Operative League, and that the Pacific Co-Operative League gave authority to Mr. Huggins to also sign checks on that account.

It was stipulated that Mr. Dobbs prepare a statement from the books of the Pacific Co-Operative League at San Francisco showing the exact amounts of loan capital paid, showing the amount of loan capital subscribed and the amount of loan capital actually paid at the date of purchase of the stores. The following figures were taken from this record: \$15,393.00 cash paid on subscriptions at date of purchase; \$2,000.00 borrowed by the Local Association on a note from Templeton Johnson; \$17,393.00 total cash to credit of Local Association; inventory showing a total value of \$21,616.38; \$5,476.36 taken from cash receipts from operation of stores; actual purchase price paid in drafts on Pacific Co-Operative League \$16,140.02, leaving a balance of \$1,252.98 surplus to the credit of the Local Association after the stores were purchased.

The foregoing statement of evidence may be approved.

Elmer J Hertel

Marcus W. Robbins E J H

Attorneys for San Diego Co-Operative Association,
Appellee.

Norman A. Bailie and
W. T. Craig

Attorneys for G. W. Brainard, Trustee, etc., Appellant.

Approved: Bledsoe, United States District Judge.
July 25, 1923.

(Endorsed): Filed Jul 25 1923 Chas N. Williams,
Clerk By L. J. Cordes Deputy Clerk

[TITLE OF COURT AND CAUSE.]

Glenn H. Munkelt, Esq., of San Diego, Cal., Special Master.

Wm. H. Moore, Jr., Ancillary Receiver, and Messrs. W. T. Craig and Norman Bailie of Los Angeles, Cal., Attorneys for Ancillary Receiver.

Messrs. Marcus W. Robbins and Elmer J. Hertel of San Diego, Cal., Attorneys for San Diego Co-operative Ass'n.

Byron F. Stone, Jr., of San Francisco, Cal., Attorney for Pacific Cooperative League Stores and Pacific Cooperative League, Bankrupt.

MEMORANDUM OPINION

Bledsoe, District Judge:— With respect to the report of the Special Master in the above entitled matter having to do with the application of the San Diego Cooperative Association for the delivery to it by the Receiver herein of three certain grocery stores situated in San Diego and the exceptions of the Receiver to such report, I have given the matter and the points presented in the comprehensive briefs of counsel, careful consideration. I can see no reason why the report of the Special Master should not be approved and confirmed.

It is true, of course, as claimed by the Receiver that the bankrupt was vested with and was actually engaged in the management of the three stores in question. It is equally true, however, and more to the point, that the members of the San Diego Cooperative Association themselves put up the money which was actually used to purchase these three stores and I have no doubt but that they at all times in good faith felt that they were the owners and operators of the stores. Their Board of Directors sat in judgment on many of the problems presented and when not so concerned they were taking advantage of the supposedly expert advice and experience in cooperative work furnished them by the Pacific Cooperative League. Because of their respective subscriptions and payments of real money to the Pacific Cooperative League, they acquired no interest or participation in any of the real or supposed general assets of the League. All their interest, dividends and profits and all their participation in any subsequent "dissolution" was limited to the activities and property of the specific stores purchased with their money. The San Diego members of the League were interested in no stores other than their own; other members were not interested in their stores.

It is apparent from the constitution and by-laws of the League itself, that with respect to "associate members" such as the San Diego members were, they were to contribute distinct funds to be handled by the League but that such funds were for the purpose of organizing distinct League branches "that they may

operate stores or enterprises." Such language would not have been used had it been intended that the stores or branches were to be the property of the League itself. So, also, the constitution provided that in order that the operation of such branch stores might be had, the Board of Directors of the League should order a survey of any proposed district to be made and decide the number of members and the capital required to operate such branch. The capital for such

purpose was to be provided by a payment of each applicant for his associate membership in the League itself, which sum was not to be returned to him, to the amount of ten dollars and such additional amount as with the other payments from similar memberships in that locality would provide the capital necessary to establish the branch in business.

It is provided and it was the actual experience of the San Diego Association that the interest at five percent upon the so called loan certificates, was paid out of the profits of the local stores at San Diego and the profits in addition, upon purchases made therein by the holders of the loan certificates, were also paid out of profits of such stores.

When all else is said, it remains the fact that these stores were bought with money actually furnished by the members of the San Diego Cooperative Association and it would require some definite and positive agreement, to which they were knowingly party, to hold that under such circumstances someone else was to become the owner and possessor of the properties

purchased by them and with their money. The contract for the purchase of the three stores was made by them. It was never approved and accepted by the League, or at least a part of it never was approved, and in any event, it is apparent that the members of the Association themselves picked out the stores wanted, negotiated respecting the prices thereof, and they were responsible for the purchase thereof. The League merely held their money and offered them advice from time to time and provided them a Manager who was paid out of profits arising from the operation of their own stores, all in accordance with its declared purpose. That the actual bill of sale was made out to the League as vendee and that other papers, indicative of ownership in it were executed, without the actual knowledge of the members of the San Diego Association, does not change the legal situation. Equity looks to the substance not merely to the form.

I cannot accede to the view seemingly expressed by Judge Bean of the District of Oregon, that as the League managed the store therefore the League must have been and was the owner of the store. If that were true, it would be a dangrous expedient for any purchaser or owner or possessor of property to employ someone to manage same for him.

If it be a fact that some members of the San Diego Cooperative Association have parted with their so called loan certificates and in return therefor have received stock or other certificates, that fact can have no influence here. The Association is entitled to

these three stores. As to who may be members of the Association and entitled to participate in the profits from or funds arising out of a dissolution of the stores, is another matter. If members of the Association shall have surrendered their loan certificates and in that wise, in equity or otherwise, surrendered or divested themselves of their interest or membership in the Association, then they have no right to participate in any profits accruing to the Association or to a division of any property belonging to the Association; and by the same token, if the Pacific Cooperative League Stores is now possessed of such loan certificates, the Receiver thereof will be entitled to make such use of them and enjoy such rights accruing from them as the individual owners thereof would had they remained in possession of them. Surrender of certificates by some would not change the legal rights inuring to the others.

Thirty exceptions were filed by the Receiver to the report of the Special Master. All of these exceptions are overruled and pursuant to Federal Equity Rule 67, there is hereby taxed as against the Receiver, the sum of five dollars for each of such exceptions so taken and overruled.

The report of the Special Master is confirmed and an appropriate order, directing the delivery of the property, as prayed for, will be entered. Counsel for the Association will prepare such order.

November 23, 1922.

(Endorsed): Filed Nov. 23, 1922 Chas N. Williams, Clerk By Edmund L. Smith, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER.

On the 23rd day of November, 1922, came on to be heard the Exceptions of Wm. H. Moore, Jr., the Ancillary Receiver in the above entitled matter, to the Report of the Special Master and the Report and Recommendations of the Special Master filed herein, and the same were argued by counsel and submitted; and, upon consideration thereof, IT IS ORDERED, ADJUDGED AND DECREED as follows:—

That the Exceptions of the Receiver herein to the report of the Special Master and to the report and recommendations of the Special Master be, and they are each of them hereby overruled, and the report of the Special Master and the report and recommendations of the Special Master are hereby confirmed;

That the prayer of the petition of the Receiver herein for an order to show cause against the San Diego Co-Operative Association is hereby denied, the rule of said order to show cause discharged, and said petition dismissed;

That Wm. H. Moore, Jr., the Ancillary Receiver in Bankruptcy herein and the respondent to the petition in reclamation of said San Diego Co-Operative Association, has no interest in or right to the possession of the stock in trade, fixtures, furniture, equipment, books of account, and other personal property, located upon the premises situated in the City of San Diego, County of San Diego, and State of California, and generally known as 618 Fifth Street, 426 Market

Street, and 1033 Broadway, together also with the good-will of the general merchandise business being carried on at said places;

That Wm. H. Moore, Jr., the Ancillary Receiver herein, be and he is hereby ORDERED to deliver possession of all of the said property above described to the said San Diego Co-Operative Association, and upon such delivery to render to said Association an account, showing the money taken in and paid out by himself in the conduct of said business during the term of his receivership; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said San Diego Co-Operative Association does have and recover of and from said Wm. H. Moore, Jr., as Ancillary Receiver herein, the sum of Five (\$5.00) Dollars as costs for each of the Thirty (30) Exceptions taken by said Receiver to the report of the Special Master and over-ruled by the Court, amounting in all to the sum of One Hundred Fifty (\$150.00) Dollars; and

IT IS FURTHER ORDERED that the order heretofore made and entered herein on the 8th day of December, 1922, be and the same is hereby vacated, and that this Order take effect as of said 8th day of December, 1922.

Bledsoe

JUDGE OF U. S. DISTRICT COURT.

APPROVED AS TO FORM, as provided in Rule
45.

W. T. Craig

Norman A. Bailie

Decree entered and recorded Dec. 18 1922

Chas. N. Williams, Clerk

By Edmund L. Smith, Deputy Clerk.

(Endorsed): Filed Dec. 18 1922 Chas. N. Wil-
liams, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS.

Comes now G. W. Brainard, Trustee in Bankruptcy
of the estate of the Pacific Co-Operative League
Stores, Inc., bankrupt, and files the following assign-
ment of errors:—

I

That the United States District Court for the South-
ern District of California, Southern Division, ERRED
in overruling the exceptions of Wm. H. Moore, Jr.,
Ancillary Receiver herein, to the report and recom-
mendations of Glenn H. Munkelt, Special Master.

II

That said Court ERRED in confirming the report
and supplemental report of said Special Master.

III

That said Court ERRED in denying the prayer of
the petition of said Wm. H. Moore, Jr. as Ancillary
Receiver herein for an order to show cause against

said San Diego Co-Operative Association and in discharging the rule of the order to show cause issued on said petition, and dismissing said petition.

IV

That said Court ERRED in ordering that said Wm. H. Moore, Jr. as Ancillary Receiver herein had no interest in or right to the possession of the stock in trade, furniture, fixtures, equipment, books of account, and other personal property belonging to the three (3) grocery stores situated in the City of San Diego, State of California, and generally known as numbers 618 Fifth Street, 426 Market Street, and 1033 Broadway.

V

That said Court ERRED in finding and ordering that the title to said three (3) stores was vested in said San Diego Co-Operative Association and not in said Pacific Co-Operative League Stores, Inc., and its successor, G. W. Brainard, Trustee in Bankruptcy of said Pacific Co-Operative League Stores, Inc.

VI

That said Court ERRED in ordering said Wm. H. Moore, Jr., as Ancillary Receiver herein, to deliver possession of said three (3) stores to the said San Diego Co-Operative Association, and in ordering said Receiver to account to said Association for the money taken in and paid out by him in the conduct of the business of said stores during his Receivership.

VII.

That said Court ERRED in not sustaining the exceptions filed for and on behalf of said Ancillary Re-

ceiver to the report and supplemental report of said Special Master.

VIII

That said Court ERRED in not ordering and decreeing that the title to said three (3) grocery stores is vested in the Trustee in Bankruptcy of the estate of said Pacific Co-Operative League Stores Inc., bankrupt, and in not holding that said San Diego Co-Operative Association has no right, title or interest in or to said stores, or any part thereof.

Norman A. Bailie, Joseph

Kirk and W. T. Craig

Attorneys for said Trustee.

(Endorsed): Filed May 21 1923 Chas. N. Williams, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

PETITION FOR ALLOWANCE OF APPEAL
AND ORDER ALLOWING THE SAME.

To the HONORABLE JUDGES OF THE UNITED
STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION:—

G. W. Brainard, as Trustee in Bankruptcy of the estate of the Pacific Co-Operative League Stores, Inc., bankrupt, and substituted herein by order of Court in the place and stead of Wm. H. Moore, Jr., Ancillary Receiver herein so far as the controversy hereinafter mentioned is concerned, feeling aggrieved by

the minute order of Court made and entered in the above entitled matter on the 23rd day of November, 1922, confirming the report of Glenn H. Munkelt, Special Master, and ordering the return of the three (3) stores mentioned in said minute order by the said Ancillary Receiver to the San Diego Co-Operative Association, and overruling the exceptions to the report of said Special Master, and directing an order to be prepared and filed in conformity thereto; and also feeling aggrieved by the order of said Court of December 8th, 1922, made in pursuance of said minute order,

Does hereby petition for an appeal from said minute order of November 23rd, 1922, and said final order of December 8th, 1922, to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that this appeal may be allowed, and that a citation be issued, as provided by law, directed to said San Diego Co-Operative Association, commanding said San Diego Co-Operative Association to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what appertain to Justice to be done in the premises, and that a transcript of the records and evidence pertaining to said controversy, duly authenticated, may be transmitted to said United States Circuit Court of Appeals.

G. W. Brainerd

Trustee in Bankruptcy for the
Estate of Pacific Co-Operative
League Stores, Inc., Bankrupt.

Norman A. Bailie, Joseph

Kirk and W. T. Craig

Attorneys for said Trustee.

The foregoing Appeal is hereby ALLOWED, no bond being required of petitioner under Section 25-C of the Bankruptcy Act.

DATED: May 21, 1923.

Wm P. James

United States District Judge.

(Endorsed): Filed May 21 1923 Chas. N. Williams Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.

STIPULATION REGARDING RECORD ON
APPEAL.

IT IS HEREBY STIPULATED AND AGREED
by and between the undersigned as follows:

FIRST. That the captions of all pleadings and papers filed in the controversy now on appeal in above matter, except the petition in reclamation of the San Diego Co-Operative Association the caption of which shall be printed in full, shall be omitted from the printed record on appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit; and that all other than these excepted pleadings and papers shall be headed only with a statement of their respective nature, purpose, date or subject sufficient to identify them, and that all pleadings and papers filed herein subsequent to the said petition in reclamation

shall be deemed to be headed with the same title of Court and cause as in said petition in reclamation; that all attorneys' cards on all pleadings and papers, and all endorsements on the backs or covers of all pleadings and papers shall be omitted from said printed record.

SECOND. That the statement of evidence under Equity Rule No. 75 filed herein shall be printed in said record on appeal so as to include and incorporate all the omissions, corrections and insertions indicated thereon, but without showing the condition of the typewritten portion thereof before such omissions, corrections and insertions were made, and without showing what omissions, corrections and insertions were made therein; that mechanical imperfections and self-evident typographical errors in all the pleadings, papers and documents may be disregarded and shall not be preserved or duplicated in said printed record on appeal.

THIRD. That the record on appeal to be certified by the Clerk of the United States District Court, Southern District of California, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit, in the controversy on appeal in the above entitled matter shall consist only of those plead-

ings, papers and documents mentioned in the praecipe for record on appeal, together with this stipulation.

DATED: August 1st, 1923.

Norman A. Bailie and

W. T. Craig

Attorneys for G. W. Brainard as Trustee in Bankruptcy of the Pacific Co-Operative League Stores Inc., Bankrupt, Appellant, Marcus W. Robbins E.H.

Elmer J. Hertel

Attorneys for San Diego Co-Operative Association, Appellee.

(Endorsed): Filed Aug, 6, 1923. Chas. N. Williams, Clerk, By L. J. Cordes Deputy Clerk.

[TITLE OF COURT AND CAUSE.

PRAECIPE.

TO THE CLERK OF SAID COURT:

SIR:

Please make a transcript of record to be filed in the United States Circuit Court Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled proceeding and include in such transcript the following portions of said record:

1. Petition in reclamation and for accounting of San Diego Co-Operative Association.
2. Answer of Ancillary Receiver to such petition in reclamation.

3. Petition of Wm. H. Moore, Jr. as Ancillary Receiver, for order to show cause against San Diego Co-Operative Association.

4. Order to show cause issued on petition of Wm. H. Moore, Jr.

5. Report and recommendations of Special Master, filed May 16, 1922.

6. Report and recommendations of Special Master, filed June 16, 1922.

7. Exceptions of Ancillary Receiver to Special Master's report.

8. Memorandum of opinion of Judge Bledsoe, filed November 23, 1922.

9. Minute order confirming report of Special Master, dated November 23, 1922.

10. Order filed December 18, 1922, effective as of December 8, 1922.

11. Petition for allowance of Appeal and Order on same.

12. Assignment of Errors.

13. Citation on Appeal.

14. Statement of evidence under Equity Rule 75.

15. Praecipe for transcription of record.

Norman A. Bailie, Joseph

Kirk and W. T. Craig,

Attorneys for G. W. Brainard, Trustee in Bankruptcy of the Estate of Pacific Co-Operative League Stores, Inc., Bankrupt, and Petitioner on Appeal.

[TITLE OF COURT AND CAUSE.

PROOF OF SERVICE BY MAIL.

United States of America,)
Southern District of California,) SS.
Southern Division.)

JANE VARDIE being first duly sworn, deposes and says: That she is a citizen of the United States over the age of eighteen years and not a party to or interested in the above entitled action. That she served the attached Praeipie for Transcript of Record on Marcus W. Robbins and Elmer J. Hertel, Attorneys for said San Diego Co-Operative Association, by depositing a true and correct copy of said Praeipie for Transcript of Record, in an envelope addressed to Marcus W. Robbins and Elmer J. Hertel, Attorneys, McNeece Block, San Diego, California, and after securely sealing said envelope, so containing said Praeipie for Transcript of Record, and affixing thereon the postage required by law, she deposited said envelope so addressed and so containing said Praeipie for Transcript of Record, as aforesaid, in the United States mail, at Los Angeles, California, on this 25th day of May, 1923.

Further affiant saith not.

Jane Vardie.

Subscribed and sworn to before me this 25th day of May, 1923.

(Notarial Seal) Olive Diffenderfer,
Notary Public in and for the County of Los Angeles,
State of California.

(Endorsed): Filed May 28, 1923. Chas. N. Williams, Clerk; by W. J. Tufts, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF CALI-
FORNIA SOUTHERN DIVISION
IN EQUITY F-99.

| | |
|--------------------------------------|-------------|
| In the Matter of the Petition of |) |
| Meyer Cloak & Suit Co., etc., et al, |) |
| for the appointment of Ancillary |) |
| Receiver for the PACIFIC CO- |) |
| OPERATIVE LEAGUE STORES. |) |
| INC., |) |
| | Bankrupt.) |

CLERK'S CERTIFICATE.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 163 pages, numbered from 1 to 163 inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, petition, answer, petition for order to show cause, order to show cause, report of special master, report and recommendation of special master, exceptions to report of special master, order confirming report of special master, statement of evidence, opinion, order, assignment of errors, petition and order allowing appeal, stipulation and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the plaintiff-in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of September, in the year of our Lord One Thousand Nine Hundred and Twenty-three, and of our Independence the One Hundred and Forty-eighth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of California.

By

Deputy.

